

CONSIDERATIONS
ON THE
PRINCIPLES
OF
NAVAL DISCIPLINE,
AND
NAVAL COURTS-MARTIAL;

In which the Doctrines lately laid down in the House of Commons upon those Subjects, are examined, and the Conduct of the Courts-Martial on Admiral KEPPEL and Sir HUGH PALLISER, are compared.

THE SECOND EDITION.

L O N D O N:

Printed for J. ALMON and J. DEBRET, opposite Burlington-House, in Piccadilly.

MDCCLXXXI.

CONSIDERATIONS

ON THE

PRINCIPLES

OF

NAVAL DISCIPLINE

AND

NAVAL MANNERS

Page 32, line 28, for *to* read *on*.

In which the Officers and Men of the Navy are
taught the principles of discipline and manners
and the importance of obedience and respect
to the laws and regulations of the service.

LONDON

Printed by J. B. Nichols and Son, 10, St. Martin's Lane.

FOR two years past we have seen the Fleet of England either idly parading the Channel in the absence of the Enemy, or retreating before them whenever they issued from their ports. Instead of those brilliant and decisive victories which we had been so long accustomed to consider as the hereditary right of the British Flag, fortunate escapes, and battles happily avoided, have been, within that period, the only subjects of public triumph. The national character seems to be passing into other hands; and the reproach with which our seamen were accustomed with so much justice to taunt their enemies, of never hoping to conquer, but placing their point of Honour in avoiding defeat, threatens to be soon transferred to themselves.

A humiliation so sudden, and which we had such little reason ever to dread, is not only deeply felt by the Navy, but is a subject of equal indignation and resentment to the Nation at large. Murmurs, and discontents, and complaints, have long been heard in every circle and from every party among the People; while the retreat and resignation of the bravest and most experienced

officers the service can boast, have been encreasing the dissensions and divisions that distract the Fleet.

From the frequency of those resignations, and the causes that produced them, the post of Commander in Chief is become an object of apprehension and dread. Those who chearfully offer to hazard their lives for the defence of their Country in any other station, refuse to run the risque of this; and the Nation with astonishment sees hospitals, and the retreats of age and insufficiency, ransacked to find out men who will accept what was once the highest honour to which virtuous Ambition could have directed its hopes.

The period from which we are to date this disgrace of the British Flag is admitted on all sides. The 27th of July, 1778. the British and French Fleets, after a variety of manœuvres, the one to bring on, the other to avoid an engagement, came to action in the Channel, with forces nearly equal. The issue, though glorious to our arms, was not decisive. The French Fleet was compelled to fly into Brest. They left the British navigation in the narrow seas uninterrupted for the rest of the campaign, and they abandoned the protection of their own commerce. By this conduct they acknowledged themselves defeated, and, for a time, we enjoyed all the advantages of success. But we had no trophies of our victory to carry into port, and the disappointment of the
People

People rose in proportion to the sanguine expectations they had been accustomed to entertain.

It was not long, however, before their indignation was directed to its proper object. Self-conviction pointed out the delinquent. An iniquitous attempt to oppress the innocent, ended in the detection of the guilty. Sir Hugh Palliser, who commanded the Blue Division on that day, attempted to fix upon his Admiral the censure which was generally laid to his own charge by the Fleet. The appeal was made to the only tribunal that was competent to decide. The Commander in Chief was not only honourably and unanimously acquitted by a Court of Admirals and senior Captains of the Fleet, but was declared to have *behaved himself as became a judicious, brave, and experienced Officer*. The Court, which had heard the charge supported by the Prosecutor himself, upon all the evidence he could procure, and found that charge refuted even by that evidence, did not hesitate, as a necessary part of the acquittal, to decide that it *was malicious and ill-founded*. The Accuser took care to leave no doubts of his motives. He proved, that he was himself the cause of that failure which had provoked the public discontent, and produced his accusation.

Here the whole would naturally have ended. The enquiry was made; the Nation was satisfied; malice and falshood were marked with in-

famy; innocence and merit received their best reward from the congratulations of a grateful People *, exulting in their acquittal.

But, unfortunately, this was not a mere dispute of naval rivalry or personal animosity. The evil lay much deeper. Government was concerned. They who ought to have held an equal hand, and only to have considered the result of the enquiry with regard to its effects on the service, were at the bottom of the contest and parties in it.

From the beginning, the Prosecution and the Prosecutor had the countenance of the Admiralty-Board. It was apparent to all the world how inexpedient it was at that time to draw off the attention of the Officers of the Navy from the active performance of their duty. This inexpediency was the apology which Sir Hugh Palliser himself offered to the House of Commons for not applying for an inquiry into his own conduct. He would not risque the interruption and injury it would occasion to the service. The objection operated with equal force against his calling for a trial on his Commander in Chief; and a marine Minister, who had nothing in view but the good of his country, would have instantly stifled the accusation—He would have done

* See the letter from the Lord Chancellor to Mr. Keppel, conveying the thanks of the Lords.

more :—he would have passed the severest censure on an Accuser, who, avowedly from motives of recrimination and revenge against his Admiral, had dared to address the Board for an order against another, under the dangerous consequences of which he had himself taken shelter from enquiry.

But, instead of this prudent and necessary conduct, the trial was ordered without a moment's deliberation, and the measure justified by the formal renunciation of a power, which can alone establish the security of discipline, and the dignity of command. It was contended that the Admiralty-Board possessed no discretionary, deliberative right, upon such applications. When a complaint was preferred, from whatever rank it came, they were bound and compelled, not only to receive it, but to proceed directly to trial, without previously considering whether it might be frivolous or ill-founded, or in what danger or detriment it might involve the state.

A doctrine so dangerous, and that went to the destruction of all naval service, spread universal alarm. Twelve Admirals of the first reputation in the service, with Lord Hawke at their head, signed an address to the Throne, expressing, in the strongest terms, their dread of its fatal consequences. Some of the oldest Captains relinquished the service; and the cry of the subversion of discipline, and of the encouragement officially held

held out to mutiny, disobedience, and contempt of orders, was heard in every ship throughout the Fleet.

Instead of endeavouring to remove these fears, and allay this ferment, the First Lord of the Admiralty appeared resolved to foment and encrease them. He took to his bosom the Author of all the mischief; he publicly boasted of the favour and esteem in which he held him; he avowed, from his seat in Parliament, that he consulted him by preference on all naval operations, in the retreat to which he had flown from the public indignation; he at length drew him from that retreat, procured him the smiles and favour of the Crown, and brought him back to professional honours and preferment.

Here, then, we trace the unhappy dissensions of the Navy, and its subsequent disgrace, from their first source down to the last measure, that seems to exclude all hopes of redress, and to confirm its decline and final ruin. Before the appointment of Sir Hugh Palliser to the government of Greenwich Hospital, there were some who were not without hopes that time would produce some happy reformation in the service. They could not allow it possible, that Ministers, convinced of the fatal errors they had committed, and alarmed at the encreasing dangers of the state, would not be anxious to heal the divisions, and quiet the fears of the Fleet, by restoring to discipline

discipline, its proper tone and firmness; by doing justice upon those in whose favour it has been so dangerously relaxed, and thus encouraging to accept command those great and approved officers, whose characters and abilities could alone give confidence to personal bravery, or efficacy and success to national exertion. But, by the promotion of the man who had been the Author of all those dissensions and fears to an employment of high honour, and which had never been bestowed but upon great professional merit, they proved to the Public, that the whole was a consequence of an established system, to be maintained and enforced at all risks.

In consequence of so daring a measure, a last effort was made in Parliament to rescue the Navy from disgrace, and to stop the progress of the disorders that had subverted its discipline and tarnished its glory. On the first of last February, Mr. Fox moved the House of Commons to interfere with its censures; but, by the opposition of the Minister, the attempt ended in encreasing the evil it was meant to remove. Doctrines were advanced, and measures avowed, in the course of the Debate, ruinous and fatal to military subordination and discipline beyond even all former causes of fear and discontent. They had, indeed, been previously broached in a speech of Sir Hugh Palliser's, on the 4th of December; but they now added this to their malignancy, that they

they were taken up and supported by the confidential Servant of the Crown, and countenanced and adopted by a Majority of the Commons of England.

These doctrines were not long confined to the walls of the House. They have been disseminated among the People * with the usual industry of Ministers. They have spread their poison through the Fleet: the murmurs, discontent, and fears of the Navy are redoubled; and the question is once more brought before the Public in all its encreased magnitude of criminality and danger.

To counteract as far as possible the fatal effects of these doctrines is the purport of the following address to the Public. I shall state them fairly, and with the candor becoming a subject in which the dearest interests of the Nation are concerned. In refuting them, I must necessarily lead my Readers to a revision of the two Courts-Martial, and of the circumstances that attended them. The Minister, and the other advocates of Sir Hugh Palliser, have imposed this necessity upon me. "They have condemned, without proof and
" without hearing, the Court-Martial that tried,
" and so honourably and unanimously acquitted,
" Admiral Keppel—They have accused them of
" assuming a power to which they were not

* In the Speech of Sir Hugh Palliser on the 4th of December, since printed.

"competent, in pronouncing the sentence,
 "which their conscience, the duty they owed
 "their Country, and the established custom of
 "Courts-Martial, had dictated to them from
 "Evidence—They have reproached them with
 "injustice to the Prosecutor, in passing *an extra-*
 "*judicial* censure upon him, on a point on which
 "he was not charged before them, and with-
 "out hearing him in his defence. On the other
 "hand, they have bestowed the highest enco-
 "miums on the superior integrity of the Court-
 "Martial that tried the Vice-Admiral, on the
 " * *unexampled strictness and rigour* with which
 "they *instituted and carried on* a full examina-
 "tion into his conduct on the 27th of July, and
 "the *complete and honourable* acquittal that suc-
 "ceeded that rigid examination."

In answering these several articles, I shall di-
 vide what I have to advance under the following
 distinct heads:

I. I shall prove the dangerous consequences
 of thus condemning the proceedings of
 Courts-Martial without hearing, and of
 shaking their determinations.

II. I shall shew, that the Court-Martial
 that tried Admiral Keppel, was perfectly
 competent to pronounce the sentence which

the Minister has thought proper to condemn;—that its proceedings were regulated by the invariable usage of their own Courts;—that the censure they pronounced on the Prosecution was not *extrajudicial*, in whatever sense the Minister may understand this expression;—and that they did not censure the Vice-Admiral *without being heard*.

III. I shall lay before the Public the grounds on which this Court must be supposed to have formed their judgment: I shall state the Charges they were appointed to try, and the Evidence produced in support of these charges, and so judge of the decision. But under this head I shall take the business up at a period prior to its coming before the Court, that my readers may form a complete idea of the whole, and be the better able to consider, under the 4th head,

IV. The contrast between the proceedings of the two Courts-Martial; the circumstances that preceded the trial of the Vice-Admiral as opposed to the conduct of the Admiral previous to his; the constitution of this second Court; the witnesses, the charge, and prosecutor; the reasons and supposed facts on which Sir Hugh Palliser rested his defence before his Judges; and that *complete and honourable acquittal* which, as he and the Minister pretend, succeeded
this

this *full* and *rigid* examination into his conduct on the 27th of July.

I.

Whoever considers the nature of military service, and at the same time reflects that on the discipline of our Navy, and the conduct and gallantry of its Officers, this Nation depends for its very existence, must necessarily admit the extreme danger of establishing a precedent for the confidential Servant of the Crown to condemn the proceedings and shake the determinations of the only tribunal that can defend their honour, or pronounce upon their guilt. There, doubtless, have been occasions when the sentence of Courts-Martial has been brought before Parliament; their judgments have been sometimes censured; but their proceedings have been impartially submitted to investigation; they have been heard as to the grounds and reasons on which they formed their decision, and the notoriety of its injustice could alone ground a censure. But it was reserved for the Ministers of the present day to condemn their proceedings without investigation, and to invalidate their decisions without suffering them to be heard;---a justice they might have done them by absolving them from their oath of secrecy.

If the precedent be adopted, and suffered to operate in its full extent, where will the mischief end? If under every change of Administration

the Minister can thus wantonly, and without hearing, fix such criminating reflections on the proceedings of a Court, bound by every principle of honour and justice, trying upon oath, and upon oath deciding between the Public and Officers who have no other tribunal to which they can properly appeal;—if, by the mere power of his word, he can induce Parliament to countenance those reflections, and enforce them by their resolutions, where is the victim of that Minister's vengeance, where is the object of the malicious prosecution of his creatures, to look for justice or protection? What power is left to defend him against the open attacks or secret machinations of Party armed with authority? Against the envenomed shafts of private prejudice, envy, or ignorance, pointed at his honour and life?

There was a sacred tribunal from which he was once certain to meet with impartial justice and honourable redress;—a tribunal erected by the wisdom of our ancestors, even on principles repugnant in some things to the spirit of the constitution, but freely indulged to the necessity and great importance of the case. But under the destructive authority of such a precedent that tribunal would be subverted and laid in the dust. There would be no longer either certainty in its proceedings, or safety or redress in its decrees. Its most solemn determinations would be shaken and vilified—the honour and integrity of its members would be subjected to the lash of every iniquitous

iniquitous Minister, and the dictates of their judgment and conscience amenable to the summary decisions of every packed majority, ignorant and uninformed, who censure without hearing, and condemn without trial,

It would be an insult to the understanding of my Readers to push this reasoning further. Even as it stands, it carries conviction on the very face of it. But it will add considerably to its force, when they are informed that the question was argued before the House of Commons, on the same ground, by those great and distinguished Officers to whom the Navy looks up with the greatest respect and confidence. This venerable Authority even went further than I have yet done. They placed in the strongest light the ruinous consequences that must result to the service from giving encouragement to indiscriminate accusations, and particularly from inferior Officers against their superiors. They by no means went to the extreme point to which the subtle and insidious spirit of ministerial debate represented them to have gone. They by no means taught that such accusations should *never* be attended to. But, if the doctrines broached by the present Board of Admiralty, and enforced by the Ministry, should be adopted—if persons exercising the authority of Lord High Admiral of England had no deliberative power or option

* See Governor Johnstone's Speech, 1st February, 1781.

to receive or reject, as should seem most expedient and seasonable to them, the applications of any officer complaining against his superior, and calling him to trial for his honour and his life *---then they maintained that there could be no stability in discipline, no steadiness in subordination, no efficacy, honour, dignity, or safety in command---the character and life of every Commander in Chief would be at the mercy of the pride, the malice, or the ignorance of every inferior officer, even to the lowest degree of subordination.

For where would be the restraint? The worst that could happen the Accuser would be to fail in his proof. However groundless and unsupported his charges might be found, still he would have no stigma to dread from the honest indignation of the Judges, the authority of whose tribunal he had dared to abuse---still his falsehoods would pass uncensured, and his malice unreprieved and unpunished. Thus the doors of the Admiralty and War-Office would be thrown open to every cowardly, refractory, mutinous, and en-

* If this doctrine was to prevail in the extent to which the assertions of the present Board of Admiralty would carry it, the Enemy, in the very midst of the most active campaign, would have only to bribe the lowest officer in the Fleet to exhibit articles of accusation against a Commander in Chief, whose abilities they should despair to contend with, and the Board must instantly suspend him; all the operations of the campaign must be interrupted, and the Fleet detained in harbour, or other officers collected through the country to supply their posts.

vious spirit, and the whole tribe of spies and informers be let loose upon the service.

Who that had a regard to his character, would, in a service so constituted, accept of command? Who that ventured to accept it, could acquit himself of his duty to his Country with safety to himself.

Could he hold the reins of discipline with that strong hand that is absolutely necessary to enforce his commands, and ensure obedience, when he knows that the Refractory, if friends with those in power, may either recriminate, or get the start of him in framing accusations against him on the very points on which he meant himself to call them to account?

Could he venture to seize that broad discretionary line that should ever be open to high commands? Could he venture to grasp at victory over the enemies of his Country by those bold and daring strokes that aim beyond the reach of tame instructions, penned merely as rules for the ignorant, or as terrors to the cowardly; that are suggested by incidental events which escape the common eye, and that through great dangers and hazards lead on to great and decisive success? No; his attention must be distracted, and his thoughts wholly employed in previously considering whether his schemes shall be supported by those whose instructions he is endeavouring to fulfil at the

the risque of his reputation and life; whether his conduct shall be approved by every officer of an hour who may call him to trial; or sit as his judge; how he can best guard himself against the enemies who are under his command, the spies of an adverse Admiralty, who, in the cold, insidious malice of smothered resentment, may watch the moment when he shall transgress the letter of the rule; or meditate schemes of disobedience by which they shall disconcert all his measures, and which they may afterwards impute to him as crimes.

Thus far I have endeavoured to impress my Readers with a conviction of the dangerous tendency of impeaching Courts-Martial without hearing, and shaking their determinations, considered as a general question, and without any particular reference to the occasion that established the precedent. The discussion was requisite, in order to shew the Public the great interest they have in every investigation that undertakes the defence of that Court-Martial, through whose sides so fatal a blow has been struck at the discipline and glory of the British Navy. To the defence of that Court the division of my subject leads me.

II.

The first thing I shall establish, in contradiction to the assertions of Sir Hugh Palliser, and the doctrines of the Minister, is the competency of the Court to do what they have done.

They

“ They accuse the Members “ of having assumed a power not given to them by the Admiralty, or by the laws of their Court; and
 “ of having inserted an extrajudicial clause in
 “ their sentence, that went to censure a person
 “ whom they were not appointed to try, whom
 “ they had not heard or permitted to produce
 “ Evidence to the point.”

This, if it had any substantial foundation, would form the matter of a very heavy charge; and the Ministers owed it to the justice of the Nation, to call to an account the persons who had so grossly abused a very sacred branch of the public judicial authority. They ought to have had more respect even to their own characters, than to introduce it obliquely, and for the mere momentary purpose of supporting a Job for a favourite. But before we, who have no such Job to do or to support, can enter with propriety into the spirit of that Charge on a Court-Martial, formed as that was, we must consider (that which they seem never to have considered) what a Court-Martial is, what are its usages, and the grounds on which those usages are established.

Courts-Martial are Courts of Honour as well as of Justice. They stand between the Prosecutor and the Accused, not only on those points that go to his life, but also to points no less important and delicate to an Officer, his character and reputation in the service. Their rules, like
 D the

the rules of all Courts, are formed on *their own practice*, and the known ideas of military men. If they do not grant copies of indictment, and instruct the defendant, when honourably acquitted, to apply for damages for a false and malicious prosecution, as is the practice in Westminster-Hall, they do what is equivalent to it in the apprehensions of men trained and formed as they are; and which is much better in every point of view. They engraft the censure on the sentence;—they protect the injured, and stigmatize the false and malicious Accuser, by one and the same decree, before they suffer either to depart from their own bar, and in the only Court where such protection could fully indemnify the injured, or fix an adequate stigma on such falsehood and such malice.

Numberless precedents proved this to have been the established practice both in land and sea Courts-Martial; and, in modelling their sentence on these precedents, the Members of the Court that acquitted Mr. Keppel must have felt themselves perfectly justified to their own consciences, to the service, and to their country. The sentence that acquitted Captain Cotton in 1766, declared the accusation to have been *groundless and malicious*. In the case of Captain Lee, the sentence of acquittal reprobated with terms of great severity the accusation and the accuser. The Court-Martial that tried General Monckton in 1764, pronounced
a sen-

a sentence so perfectly in point, that I cannot but transcribe it for the satisfaction of the Reader.

“ The Court is of opinion, that the Charge and
 “ complaint of Colin Campbell, Esq. against
 “ Major-General Monckton *is altogether unsup-*
 “ *ported by evidence, and in some points expressly*
 “ *contradicted by the Complainant's own witnesses;*
 “ and doth therefore most honourably acquit
 “ the said Major-General Monckton of the same,
 “ and of every part thereof: and the Court is
 “ further of opinion, that the said charge and
 “ complaint is *groundless, malicious, and scanda-*
 “ *lous* in the highest degree, and tending not on-
 “ ly to injure the said General Monckton in his
 “ character, *but to hurt the service in general,* as
 “ it must greatly affect every Officer who may
 “ have the honour of commanding a body of his
 “ Majesty's troops, *when he reflects that his cha-*
 “ *racter and reputation are liable to be thus pub-*
 “ *lickly attacked* by a person who has been dis-
 “ missed his Majesty service with ignominy.

“ It is likewise the opinion of this Court, that
 “ the complainant, Colin Campbell, Esq. has by
 “ many falsities imposed upon his Majesty's Se-
 “ cretary at War, in order to obtain a Court-
 “ Martial.”

Several other precedents might be quoted; but Sir Hugh Palliser has rendered it needless by admitting the usage himself, and justifying its policy. He *readily acknowledges, that there are*

D 2

instances

*instances of sentences acquitting the Accused, and reprobating the Accuser for making the Charge. He readily acknowledges there may be circumstances when such censure is excusable * ; “ where “ the Accuser has been heard in support of his “ charge, and fails grossly ; or has declined to “ be heard, and admits that his charges are not “ proved : it may be excusable,” he says, “ under “ aggravated circumstances, to censure the Accuser for the sake of more completely marking the “ injury done to the honour of the Accused.”*

I thank him for the observation ; and I embrace it in all its extent and consequences. I desire no other vindication of those honourable men, by whose verdict he stands recorded as a false and malicious Prosecutor,—no other condemnation of himself. If ever Accuser was heard in support of his charge with patience and impartiality ; if ever Accuser grossly failed to substantiate a single article of his allegations, the Minutes of the Court-Martial, the unanimous voice of his own profession, the united votes of the Lords and Commons of England, the universal sense of the Nation at large, will all proclaim Sir Hugh Palliser to have been that Accuser. If ever circumstances of aggravated guilt and injustice rendered it excusable to censure the Accuser for the sake of more completely marking the injury done to the honour of the Accused, I will appeal to

the same evidence, if the prosecution carried on by Sir Hugh Palliser against his Admiral was not distinguished by those circumstances *beyond all former examples.*

The observation with which this extraordinary confession is followed is far from making any exception in his favour. He calls upon Mr. Keppel's friends to name an example of *such* a stigma on an Accuser, *without allowing him to be heard in support of his charges, and in defence of himself for making them.*

If Sir Hugh Palliser was *not* heard in support of his charges, Mr. Keppel was certainly neither honourably nor fairly acquitted: I am ready to admit that he was not tried at all; and that the part of the sentence which censures the Accuser, and the part which acquits the Accused, were alike not only erroneous and unjustifiable, but even void to all intents and purposes. But if I know what hearing an officer in support of his charges means, sure I am that Sir Hugh Palliser has been heard to every extent that the strictest justice could require. Would he insinuate, that, when Sea-officers accuse, defend, and judge, it is by their oratory the matter is to be determined? Would he insinuate, that his charge, drawn out on the fullest deliberation, was not repeatedly read? Will he assert, that any of his Witnesses were held back and not examined to the full? Will he or his abettors name one example where

where a Prosecutor was heard in support of his charges in any other manner than that in which he was heard; or produce a single instance in which any Accuser ever *admitted that his charges were not proved, and desired to be heard to his motives in his own defence?* Till he can produce such an instance, Admiral Keppel's Court-Martial will stand justified by his own admission; and all the arguments founded on this objection in his favour must fall to the ground.

"But," says the Vice-Admiral; "*I applied to be heard, and the Court refused me a hearing. They would neither suffer me to explain the grounds on which I could have sustained my charges, nor my motives for making them.*"

Let us consult the Minutes of the Court-Martial. How far are those assertions, absurd and ridiculous in themselves, supported by the fact, as it stands upon this indisputable record?

The Vice-Admiral, as soon as he had declared that he had closed his evidence, * applied to the Court for the Judge-Advocate to have leave to read a few words he had prepared by way of *address*. The Admiral, very properly, denied his right to make such an address, *if it was meant to go to the merits of the case*. A speech of that *tendency* could not be made either at the close of

his evidence, or in any other stage of the cause, as it then stood. The Prosecutor had then made his *charge*, and *supported* the merits of it by the only means his Judges could admit, by producing his witnesses in support of his allegation. "The Admiral did not resist the Prosecutor's claim from any imagination of danger to himself; but, as he never knew or heard of such an attempt in any Court-Martial before, and such permission might be attended with ill consequences in other cases that might be governed by the precedents of this, he trusted that his cause, which was sufficiently new in many respects, might not be distinguished by any such innovation." On this the Court withdrew to deliberate; and, "it not recurring * to the recollection of any of the Members that it had ever been the usage at Court-Martials to admit any such address, they determined that the paper offered by the Accuser should not be received."

When Admiral Keppel closed his evidence, † *he declined making any observations upon it*. He had already made his defence, as Sir Hugh Palliser had made his charge, and he had called his witnesses to support the truth of it. The testimony of those witnesses was upon the Mi-

* Admiral Montagu was several times obliged during the trial to observe, that for *thirty* years he had frequent occasions of sitting on Courts-Martial. Mr Keppel observed, that no such right was claimed by the Prosecutor for the Crown, on the trial of Mr. Byng, of which he was a member.

† Page 166, Admiral Keppel's Trial.

notes of the Court, and it remained with the Judges to compare them. Any comments of his could never come before them, so as to influence their decision; he therefore *submitted the whole to their wisdom and justice.*

This is the fact as it stands notorious upon the Minutes printed by authority: yet Sir Hugh Palliser does not blush to complain, before a Committee of the House of Commons, of the unfairness of the Court, and of their injustice to him ‡, *in bearing the evidence observed upon and applied by Admiral Keppel, while the same benefit was denied to him.* "Had not that equal advantage been denied to him," he contends before the same Committee, "that he could have cleared himself from the imputation of Malice."

Sir Hugh Palliser, I suppose, well understood the fidelity and diligence with which the party in that House to which he addressed himself usually examined records. They must have known, from indisputable record, that Mr. Keppel, far from observing and applying the evidence, absolutely *declined every such observation and application.* "I have now closed my evidence," says he to the President, "*and I shall make no observation upon it.*" I submit the whole to the wisdom and the "justice of the Court." This, the Vice-Admiral tells the Representatives of the Nation, is *observing*

upon and applying the Evidence—This is the advantage with which Mr. Keppel was indulged in preference to him. But they knew, and the Nation at large knows, that there was not a single advantage or indulgence granted to Admiral Keppel by the Court, that they did not equally grant to his Accuser. Was he not suffered to open his prosecution, and, in the most ample manner and strongest terms which mature deliberation could have suggested, to state *the merits of his case*? Were not the charges read to the Court, and repeated to the witnesses? These charges not only contained his accusations, but also argued on the supposed facts he had alleged as grounds for those accusations, pointed out their criminality, and quoted the Articles of War that declared them capital. In support of these charges he proceeded to call his evidence; and this he was suffered to do, to every extent he chose, for one and thirty days together, either in questioning his own witnesses, or in cross-examining those produced by his Admiral in defence. He knows, that, so far from having any thing kept back, his witnesses were examined much more deeply than he chose. Though he was the Accuser, and in a situation not defensive, and consequently must have wished, if a fair Accuser, to have drawn out *all*, he frequently objected to the extent to which they were questioned before the Court. Where then is the *unequal* advantage? And with what face could he dare assert, that *the grounds on which he COULD HAVE sustained his charges have*

in truth never yet been explained by himself †. But why have they never been explained by himself? He says the Court-Martial prevented him. We see that this Sea-Officer disdains to submit to the decision of Courts-Martial. He throws himself upon a party in Parliament—he even condescends to write in the Morning Post.

In reading the Speech, which he has since printed, he professed *his readiness to bury in oblivion passed injuries, if Admiral Keppel's friends would abstain from new provocations; but, if they should persevere in their attempts to exclude him from the service, he threatens to produce to the Public what he would have offered in support of his charges, had he been heard.*

Mr. Fox, the second of February following, made a motion in the House of Commons, directly aimed at his final exclusion from the service. If ever there was a time in which he was loudly called to for the execution of these threats, it was then. The authority of the place, the effect of the motion to his honour and reputation, the person of the mover, *a friend to Admiral Keppel*, avowing himself to be so, and one whose abilities he could not affect to despise, all combined to force from him this grand secret, which he has to this hour so carefully kept locked up in his own breast. Most things that

ought really to be kept secret imply dishonour in the divulging. But here his honour demanded that the secret should be divulged :—for what was it after all? His secret was his Defence : therefore, as he has kept his secret, and his Defence remains concealed, he remains undefended. Mr. Fox took up the gauntlet of defiance he had thrown down. He defied him in return. He rubbed and irritated the sore with all the keenness and poignancy of just invective which his unrivalled eloquence could apply to it. Why did not Sir Hugh Palliser then execute his threats? And why was he content with Lord North's miserable after-thought defence?

But to return to the Court-Martial. Sir Hugh Palliser, in his printed Speech, says, * “Admiral Montague promised to hear me at the close of the Admiral's defence; yet, on claiming to be heard, he broke his promise, and the Court declared my claim to be unprecedented.” In support of this assertion, he quotes the Trial printed by the authority of Mr. Keppel. In the little policy of petulant litigation, it seems dexterous, if not fair, to apply for his evidence to the Trial printed by the desire of Mr. Keppel : but in a grave matter, which concerns a Court of Justice, he ought to go to the Trial printed by Authority of Office, which, till he has proved some falsification, ought alone to be considered

as authentic. But, unfortunately for him, the testimony of that record is as adverse to him, as the record printed by authority of the Admiralty-Board.

In page 121 of that Trial, Mr. Montague observes, "How far you will admit the Prosecutor to say any thing, after the Prisoner has called all his evidence, is another matter, and *then the Court is to deliberate upon it.*" Afterwards he adds, "Whatever they (the *Prosecutor* and *Prisoner*) may say afterwards, when the Prisoner's evidences are examined, I shall be extremely ready to hear; every thing the *Prosecutor* has to say, and every thing the *Prisoner* has to say, I shall, to the best of my knowledge, determine upon it. *If it is a point to be debated upon, I shall be ready to go out and debate upon it.*"

This promise, as the Vice-Admiral terms it, Mr. Montague performed most sacredly: for how stands the fact? The *Prisoner*, after he had closed his evidence, declined saying a word further in defence. The Prosecutor once more professed * *his intentions of addressing the Court with some observations*—To what points? "Observations," he tells them, "as well upon the Evidence as on the *Defence.*" To prepare these, and collect them from the great mass of mi-

notes, he required no less time than from Monday till Wednesday.

But what had the Court-Martial to do with his comments on the Evidence or on the *Defence*? Was it not the Evidence itself, and their own judgment upon it, when compared with the charges, that were alone to determine their decision? That Evidence did determine the Court and the Nation; and such clear and full Evidence never was given in any cause.

If he had any new matter to produce, to which he meant to call Evidence, his claim, though unprecedented, might plead some colour of justice, But he informed the Court himself, that he was moved to urge it, *† the more especially, as the Admiral thought fit to defend himself by criminating him.* The assertion was false in fact. The circumstances that went to his crimination came out in the examination of his own witnesses, and mostly in answer to his own questions. But, supposing it otherwise, we have here, in his own words, the *only* subject on which he applied to be heard by the Court. But was this Court to attend to his exculpation? Were they to take cognizance of any criminating matter that might be drawn out against him by answers to his own questions, or to hear him in defence?

† Ibidem.

Supposing

-Supposing that he should be able to clear himself from those articles of crimination, and that this was the time for it, how was that to do away *the Malice of his motives?* It does not readily occur to any man of a plain understanding how such reasoning applies to the case. Suppose the Court, to gratify Sir Hugh Palliser, had chosen to indulge him in an attempt to acquit himself of the criminal matter which had been drawn out of the witnesses by his own questions—that might shew his conduct in the action of the 27th of July less *culpable*, but could never make the *motives to his accusation more honourable.*

The Court judged of his motives, as all men will judge of the motives of others, by his actions, not his declarations. He had brought a capital charge against his Commander in Chief, which was proved groundless in every fact by all the evidence called by the Party accused, and even by himself. Had he not been an eye-witness as well as they? Was he not as capable of judging of the subject as they were? Had any of these witnesses declared what was *proved* to be *false*, would not all the world have concluded them perjured? Now what is Perjury in the Witness, is Malice in the Accuser, founded alike in wilful falsehood. Where there can be no error, a charge known to be false, and a malicious charge, are one and the same thing; and I shall shew, out of his own mouth, in the course of this discussion, that he knew his charges to be absolutely groundless,

less, and directly contrary to fact. Was not this sufficient evidence to make the Court decide upon the Malice? Should they have required positive evidence? But what *positive* evidence can any witness possibly adduce to prove another man's *private* motives and intentions? It is not to be expected that he will betray his own secret, and condemn himself. His own guilty conscience, therefore, betraying itself by the most unequivocal manifestations, discovering itself by overt acts, and portrayed on the very face of his conduct, is the only witness that can depose against him.

I have dwelt, perhaps, too long on this plea suggested to the Vice-Admiral by the Minister, as it carries its refutation in its absurdity. For let us suppose that so foolish a thing as a separate trial on the *motives* had been instituted; what Evidence could be produced to substantiate the charge of Malice against Sir Hugh Palliser, but the identical Evidence that was produced on Admiral Keppel's trial? That is to say, to prove Malice, on Sir Hugh Palliser, Admiral Keppel must be tried a second time.

But the Minister again suggests, and Sir Hugh Palliser again adopts the suggestion; that the censure was *extrajudicial*. I cannot discover what meaning they annex to this term *extrajudicial*. It is certainly different from the use of it in common conversation, and still more remote from its technical application. But in adopting it they seem to insinuate some flagrant guilt in the Members

Members of the Court-Martial;—as if they had assumed some power not given to them by the Admiralty, or by the laws of their Courts, and committed a crying act of injustice by travelling out of the question, and censuring a person whom they had not been appointed to try, whom they had not heard, nor suffered to produce Evidence to the point.

That they did not infringe the laws or usages of their own Courts in passing censure on a false and malicious Accuser, has been proved by the precedents I have quoted, and is admitted by Sir Hugh Palliser. He grants the existence of the usage, and he acknowledges there are circumstances that render it *excusable*;—a tender expression, but sufficient for the vindication of those Officers, whom he accuses of an unjust and unprecedented assumption of power in applying this usage to his own case.

But I am willing to meet his advocates on what they may esteem more advantageous ground for his cause. I will positively deny that the Members of this Court have assumed a power not given to them by the Board of Admiralty in the order to Sir Thomas Pye to assemble them.

By that order they are directed to examine into and try the *Charge*. They had before them the clearest and the fullest Evidence to every article that *Charge* contained. To the proof attempted

attempted in support of every article they gave a full, patient, and impartial hearing; and the result of their enquiry was a clear and decided opinion that the *Charge* was *malicious and ill-founded*; that the very reverse of the allegations set forth in that *Charge* was established throughout by the very witnesses that had been produced to support them; that where the *Charge* imputed guilt, the Evidence, called in support of it, proved the most signal merit; and that, consequently, the accusations must have been the mere coinage of a heart *maliciously* intentioned towards the Admiral. Led into this conviction by the most strict and juridical disquisition, they give it to their Country as the ground of their sentence; for it was therefore,--that is, in consequence of that conviction so acquired,---that they *unanimously* and *honourably* acquitted the Admiral of the several articles contained in that charge against him. Where, then, is that unjust assumption of power, of which Sir Hugh Palliser accuses them?

But, whatever that Gentleman may think on the subject, it is evident, from a very late record, that the Minister was not always of his present opinion relative to judgments of this nature. In the case of the Petition from the Assembly of the Massachusetts-Bay against their Governor and Lieutenant Governor, pleaded before the Privy Council, (the present Lord Chief Justice of the Common Pleas has reason to recollect with pleasure his celebrated Philippic against Dr. Franklin,

F

on

on that occasion,) the following judgment was pronounced in consequence of the report.

February 7, 1774. "His Majesty, taking the
 "said report into consideration, was pleased, with
 "the advice of his Privy Council, to approve
 "thereof; and to order that the said Petition of
 "the House of Representatives of the Province
 "of Massachusetts-Bay be dismissed the Board as
 "groundless, vexatious, scandalous, and calculated
 "only for the seditious purpose of keeping up a spirit
 "of clamour and discontent in the said province."

The Representatives of the province of Massachusetts-Bay were not then put out of the pale of Government; they had not then been declared undeserving of justice, or excluded from the protection of the laws of their country: yet were they heard as to their *motives*? Was it *proved* upon them, that they *only meant to keep up a spirit of clamour and discontent in their province*? Will the Author of the Philippic, or the Judges, assert that the facts charged were disproved, as in the present case, by the very evidence produced on the part of the prosecutors? Will they say that they were trying the petitioners? Was not that part of the sentence then *extrajudicial*? And should not the Representatives of the Province of Massachusetts-Bay have been protected, encouraged, promoted to honours, to indemnify them for such a crying act of injustice?

It appears equally evident, from a record of
 much

much later date, that the Majority of the present House of Commons, when they do not echo the Minister's words, are not of the opinion they countenanced on the 1st of February, relative to *extrajudicial* judgments of this nature. On the 11th of March, Mr. Frederic Montague reported, from the Committee appointed to try the Petition touching the Abingdon Election, that the said Petition was *vexatious*, frivolous, and *groundless*. The House confirmed the report. The House did more—it *inflicted punishment* on the Petitioner, as far as its power extended, and awarded costs and expences to Mr. Mayor. Mr. Mozey, indeed, pleaded the unfairness of condemning Alderman Wooldridge *without a bearing*; but what was sound doctrine, when applied to the Governor of Greenwich Hospital, was damnable heresy, when applied to Alderman Wooldridge. The Majority of the House confirmed the *whole sentence*, and it stands at this moment upon their Journals.

But why should I seek for arguments out of the question before us, when it supplies me with the most convincing that were ever yet required on any debate? Did not the Minister himself give the lie to his own doctrine, at the very instant that he was proposing it to his creatures for their adoption? Did he not himself condemn the Court-Martial that tried Mr. Keppel, *without bearing and without proof*? Was not his injustice aggravated by the consideration that the brave Officers

whom he thus condemned, were precluded from defending themselves by the oath of secrecy they had taken ?

If it could be either in his wishes or his nature to grant them redress, to get them absolved from their oath, as the law authorizes, and to put them on their defence at the bar of the House, it is no difficult matter to conceive on what ground they would proceed in their justification.

They would produce the whole body of Evidence, and oppose it to the several articles of the charge.

They would tell you that they were bound by their duty, after examining into the truth of the facts, to attend to the spirit with which the Vice-Admiral conducted the Prosecution ; the manner and language in which he put his questions, their nature and tendency : and they would shew you, that in several of those questions he supposed facts as advanced by the witnesses which they never had advanced ; that he followed this supposition of facts by new matter of crimination founded upon it, by which he attempted to put his own ideas into the mouths of the witnesses, and to deceive them into expressions contrary to the substance of their deposition ; that this was his perpetual attempt ; and that he frequently proved, by those very attempts, the falshood and malice of his own charges.

Lastly,

Lastly, they would represent the injustice, the acrimony, the malevolence of his claims, his objections, his remarks, and the thousand other particulars which indicate *Malice* beyond the conviction of the most *positive* evidence.

What those injured Gentlemen cannot do for themselves, I shall attempt for the satisfaction of the Public. It will lead me into a long and circumstantial detail, as the reasons I have already assigned compel me to take it up at a higher period than when it came before the Court. Without this retrospective view, it will be impossible to form a compleat judgment of the motives and conduct of Sir Hugh Palliser, or of the part which the Board of Admiralty have acted in this iniquitous prosecution.

III.

When their apprehensions, on the alarming state of this Country in 1778, had terrified Administration into a forgetfulness of all party-distinctions, and compelled them to seek for character and abilities equal to their protection, even among those who had uniformly opposed their measures, Sir Hugh Palliser was the person appointed by the Marine Minister to express their wishes to Admiral Keppel that he would undertake the command of the home Fleet. The Vice-Admiral acquitted himself of this commission in a manner

manner no less expressive of the feelings of a private friend, than of the sentiments of a public character, rejoicing in the prospect of seeing his country well served and ably protected.

After the action of the 27th of July, he continued to live with his Commander in Chief on his usual terms of friendship. He received at sea with acknowledgment the Admiral's civility and attention in communicating his different informations, and gave his opinion, when consulted, in friendly terms.

On the arrival of the Fleet at Plymouth, he was more assiduous than any other officer in command to pay court to his Admiral. Sir Robert Harland visited Mr. Keppel at Mount Edgecombe now and then ; Sir Hugh Palliser every day, and sometimes twice a day.

The subsequent cruize produced no alteration in his conduct. As late as the 9th of October we find him writing a letter to his Admiral, complimenting him on his disinterestedness, and on his eagerness to meet the Enemy, and concluding in terms of friendship and affection.

At the end of October the Fleet arrived at Spithead. Lord Howe, Sir Hugh Palliser, Sir Robert Harland, and almost every Captain of the Fleet, were on board the Victory to compliment the Commander in Chief. Much general conversation

versation arose about naval matters. Sir Hugh Palliser was mixed with others. His long visit had every friendly appearance, and very different from any hostile intentions.

The very next morning he goes on shore to Portsmouth. In the newspaper that comes to his hand he finds an anonymous letter censuring his conduct on the 27th of July. The failure of that day was there attributed to his backwardness in pretty strong terms, and the escape of the French ascribed to his not obeying the signal of his Admiral.

Whether it was that he, from that instant, conceived the malicious design he has since carried into execution, or that a consciousness of guilt directed his suspicions to the quarter from whence he had most to dread, he charged the officers of the Victory as the authors. The Admiral hears of his warmth and unguarded indiscretion—a conversation ensues, moderate in temper and expression—on the part of the Admiral, candid and unreserved; on the part of Sir Hugh Palliser, of a colour with the designs he was then meditating—dark, equivocal, insidious.

The day after comes down his leave of absence, and he instantly sets out for Town. His motives for visiting the Admiralty with such cautious expedition can fairly be gathered from his immediate subsequent conduct. He made the best
use

use of his time. On the 3d of November, Mr. Keppel, then just arrived in town, received a letter of which the following is an extract :

“ I think myself much entitled to have my
“ conduct on the day when we engaged with the
“ French Fleet, justified by you, Sir, Commander
“ in Chief, from those foul aspersions. I have
“ been expecting your offer to do it—I have
“ waited for your coming to Town to ask it.
“ Being now informed of your arrival, I lose no
“ time in desiring you will contradict those scan-
“ dalous reports that have been propagated as
“ before mentioned, by publishing in your own
“ name the enclosed paper which I have the ho-
“ nour to enclose herewith,

“ I must beg the favour of your speedy an-
“ swer, that my honour and reputation may not
“ be farther wounded by delays. I am, very
“ respectfully, Sir,” &c. &c.

This letter, so different in style and temper from his correspondence with his Commander in Chief before he had seen the First Lord of the Admiralty, contained the paper that follows :

“ Having seen a paragraph in the Morning
“ Intelligencer of the 5th of last month, highly
“ reflecting on the conduct of the Vice-Admiral
“ of the Blue on the 27th of July last, when
“ the Fleet under my command engaged the
“ French

“ French Fleet ; and the Vice-Admiral having
 “ informed me that reports to the same purpose
 “ have been propagated by some officers of the
 “ Victory ; I think it necessary, in justice to Sir
 “ Hugh Palliser, to publish to the world, that
 “ his conduct on that day was in every respect
 “ proper and becoming a good officer. And I
 “ further declare, that, when I made the signal
 “ in the evening for the ships to windward to
 “ bear down into my wake, and after for par-
 “ ticular ships of Sir Hugh’s Division to do so, he
 “ repeated those signals properly ; and that the
 “ calling his and Sir Robert Harland’s Division
 “ into my wake in the evening was not for the
 “ purpose of renewing the battle at that time, but
 “ to be in readiness for it in the morning ; that,
 “ in obedience to the said signals, such of the ships
 “ of Sir Hugh Palliser’s Division as were in con-
 “ dition for it, did immediately bear down, as did
 “ the rest so soon as they were able ; so that Sir
 “ Hugh Palliser and his whole Division were all
 “ in my wake accordingly by the next morning
 “ before day-light, ready for action.”

Such was the false and scandalous libel upon
 himself, and upon his officers, which the Com-
 mander in Chief of the British Fleet was peremp-
 torily called upon to sign by his inferior officer.
 He knew, that, by the neglect and disobedience
 of that officer, all his well-founded hopes of a
 complete, and perhaps decisive service to his
 country were frustrated. The facts he was di-

rected to attest, he knew to be as false as the spirit that had invented them; and we shall see hereafter, that they were proved to be false by evidence upon oath. The intentions he was *ordered* to ascribe to himself, he knew, were directly contrary to those he had formed on the evening of that memorable day. The officers he was required to asperse and stigmatize, as **malignant, wicked, dark assassins*, guilty of spreading *false and scandalous accusations*, he knew to be men of the strictest honour and nicest feelings—they were of his household—they were bound to him, and he to them, by the reciprocal ties and endearments of fidelity and protection, attachment and gratitude, the claims of merit, and the wish and power to reward—persons, whom Sir Hugh Palliser's own advocates have not since dared to attack. Had he signed such an instrument, he would have signed his own infamy,

He therefore rejected a repetition of the Vice-Admiral's menacing proposals, in an interview the next morning, with a spirit becoming his feelings and character. He disdained to prostitute the name and dignity of an English Admiral by Newspaper justifications. He would not stoop to contradict an anonymous assertion, which was not to be found in his public letters to the Admiralty. He dared the Vice-Admiral to execute

* See a letter in the Morning Post of the 4th of November, signed H. Palliser.

his threats of accusation. He defied this insidious calumniator to *tell all*—an expression he had used, as if Admiral Keppel had been in treaty with him to keep something secret.

At that very instant the Vice-Admiral had in his pocket the account of the transactions of the 27th of July, which he inserted that night in a paper devoted to the First Lord of the Admiralty; an account signed by his own name, full of the falsest assertions, and containing the outlines of those malicious charges which he has since attempted to prove, to his own shame, and to the full discovery of his own disobedience and guilt. This measure he embraced as the most effectual to clear his character; but, as an officer, he should have known, that he could neither lose his character, nor recover it when lost, but by the public blame, or public approbation, of his Commander in Chief, or by the sentence and determination of a military Court. As to the Commander in Chief, such a libel on his conduct could challenge his notice only in one point of view; as a subversion of discipline, and tending to mutiny. Had his flag been flying, he would have put the Author under instant arrest; but, by his return to port, his chief power reverted to the Lords of the Admiralty; and they chose to pass this unparalleled and unprecedented crime against subordination unnoticed. They saw, without censure, their own legal authority despised and trampled on by a Member of their

own Board ; and the Morning-Post invested with their powers of enquiry, trial, and punishment. It was not in Admiral Keppel's power to render them sensible of what they owed to the dignity, or to the duty, of their office. It was therefore necessary that Parliament should interfere.

On the question being first agitated before the Commons, in November, Sir Hugh Palliser was heard to assert, that the bringing his Commander in Chief to a trial had ever been in his thoughts ; that he never lost sight of it from the day of the action ; and that he only waited for a proper season to make him account to his Country for his conduct.

But how was he to reconcile this declaration with the cordial and friendly terms on which it appeared he had lived with his Commander in Chief from the 27th of July to the 27th of October ? What answer was he to give to the assertions of Lord Shuldham * and Captain Walsingham, speaking from their places, and bearing testimony to the cordial terms on which he seemed to live with his Admiral, and the general approbation he had bestowed on his conduct on their return to Plymouth after the 27th of July ?

Such a discovery compelled him all at once to change his ground. On the ninth of Decem-

* See Almon's Debates of the Commons, p. 135.

ber he had presented five charges against his Admiral, pledging himself to convict him as a traitor and coward, negligent of the duty imposed upon him by his Country, and of the trust she had committed to him in the hour of her danger. Lest the fulness of his rancour and vengeful malice should not be sufficiently manifest, and the implacability of his intentions sufficiently understood, he had closed every one of these charges with quotations from the Articles of War, to shew that no punishment could gratify him less than the forfeiture of rank and life.

On the 11th, he rises in his place in Parliament, to declare the motives of this conduct in the face of the Representatives of the Nation. Regardless of character or consistency, and attentive only to gratify his revenge, he, on this day, forgets the constant intentions he had expressed a few days before, "of calling his Admiral to an account. † He now *acts upon self-defence*---a worm will turn if trod upon. The Admiral had refused to take the blame which the Fleet agreed in laying to the charge of the Vice-Admiral, and transfer it to himself. Anonymous aspersions had been thrown upon the character of the Vice-Admiral, and the Admiral would not fix the odium of them upon the officers of his own ship." Above all, "the

† See Almon's Debates of the Commons, p. 134.

" Admiral

“ Admiral had declared * that he considered the
 “ libel which had been published against him
 “ in a common newspaper, signed with the name
 “ of an Officer under his orders, to be such a
 “ subversion of all subordination and discipline,
 “ that he would not serve with him till that af-
 “ fair was cleared up.”

Pressed by these virtuous and patriotic motives, the Vice-Admiral feels himself compelled to call for—what? An enquiry into his own conduct? An opportunity of justifying himself from the reports that were spread abroad injurious to his character?—No †; he calls for a Court-Martial to try that Admiral, whom, in the very same breath, he declares to be “ the man
 “ living ‡ for whom he had the highest veneration
 “ and esteem, and whose intimacy and friendship
 “ he looked upon as one of the happiest circumstances of his life”—to whose conduct, for the four days the Enemy were in sight, he had borne the most flattering testimony § on the records of his own ship—under whose command, after that

* See Almon's Debates of the Commons, p. 91.

† This the First Lord of the Treasury, with all the plenitude of the *ore votundo*, maintains is not *Recrimination*. The Vice-Admiral himself calls it so here in the House of Commons, calls it so on his Defence, calls it so in his printed Speech, where he even defends the *Right of recriminating*.

‡ See the Debates, p. 134.

§ See the Extract from the Log Book of the Formidable, p. 76. Admiral Keppel's Trial.

period, he had put to sea in the service of his country---whom, for the five succeeding months, he courted when present, and applauded when absent, and on whose character he uniformly bestowed the most unreserved and unqualified approbation.

The application for this trial was made to a Board of which he himself was a Member, and which implicitly obeys the mandates of his avowed patron and protector. It is not, therefore, to be wondered at, if, instead of the censure his former mutinous libel called for at their hands, they should receive this additional attack upon all discipline and subordination with a precipitancy at once impolitic and indecent, and that left not a shadow of doubt but that the application and charges were the result of previous concert between the Prosecutor and the Board. Sir Hugh Palliser's letter was delivered in at three o'clock on the afternoon of the 9th of December, and notice of the trial's being ordered was left at Mr. Keppel's, in Audley-square, between nine and ten the same evening.

This was the deliberation allowed for this nice and critical step. They did not hesitate one moment. They would not sleep upon a business which might involve in its consequences the ruin of the Marine, and which has brought, in fact, the greatest mischief on the service.

The

The Admiral received the notice with a spirit becoming the name he bore, and the reputation he had established. It required but a very short time to determine upon his answer. In a letter of the next day's date he signified his willingness to meet the Court-Martial, whenever the Admiralty should order it. But with that conscious superiority, which honour and innocence naturally assume over guilt, however exalted by office, he at the same time desired that the Commissioners might be warned of the dangerous and destructive tendency of the countenance they had given to so extraordinary a proceeding. * In terms equally manly and guarded he arraigned them for having resolved, on the same day on which such a charge was exhibited, to order a Court-Martial against the Commander in Chief of the Fleet, under all the very particular circumstances in which Sir Hugh Palliser then stood.

Many reasons occurred to induce him to put off the day of trial. He had applied to the Admiralty for leave to produce his Instructions, but he was informed that it was his Majesty's pleasure that they should not be produced †.

These Instructions might have been essentially necessary to his full justification. He was

* See the letters that passed between the Admiral and Mr. Stephens, page 170, Admiral Keppel's Trial.

† See his letter to Mr. Stephens, 16th Dec. 1778, p. 172; and the answer, 21st Dec. p. 173.

accused of not having performed his duty ; and, unless his Instructions were fully explained to his Judges, how was it possible for them to know what that duty was in its real extent ? By refusing him the liberty of producing them, the servants of the Crown reduced him to the alternative, either of bringing detriment to the State, as they would insinuate, by producing them, or of doing a prejudice to his own justification by repressing them. Thus was his Majesty's name most indecently made a cover for injustice, and the royal pleasure placed as a bar to the full justification of an Officer of the highest rank and trust, prosecuted for his fame and life at the suit of the King.

But the Admiral's option was soon made. He was resolved that his Country should not suffer for the folly or injustice of his enemies. He was willing to run every hazard to his life, as he had so often done before for the service of the State. He did not produce these Instructions before the Court. He did not even shew them to his Council, or communicate their contents to any one.

The Evidence of Captain Windfor and Lieutenant Bertie were equally material to his defence. A fact on which one of the principal charges turned was to be ascertained chiefly by the depositions of these gentlemen, and they were their prisoners in France. Yet, while he requested that measures might be taken to procure their

appearance at his trial *, he desired, that, if they did not arrive by the day fixed for the assembling of the Court-Martial, it might not be deferred on that account.

At the same time he opposed all the efforts of his friends, and the attempts of many who voted with Administration, to quash the trial and prevent an enquiry. The remonstrances of the first, and the political fears of the latter, were equally ineffectual to make him consent that a stop should be put to all further proceedings; and at the time appointed he repaired to Portsmouth, where all the necessary arrangements were instantly made for trial. The Officers, who were either to sit as Judges, or appear as Witnesses, were assembled. In seating the one, or summoning the other, he could have neither management nor interest. There was not an individual among them, who could have any reasons of his own for being biased in favour of the Admiral in the business of the 27th of July. Not one of them had been present or concerned in the action. There was neither Relation nor particular Friend of his in the number—But here I beg pardon—wherever there was an Officer of the Navy of England, deserving that name, the conduct and character of Admiral Keppel made that Officer his Friend.

With regard to the witnesses, he could not be supposed to have garbled them. All the

* See his letter December 26, pages 174, 175.

Admirals and Captains under his command were summoned to give testimony to his conduct. As they had been present, they were necessarily the best witnesses, and the most deserving of credit, whether this Evidence should go to acquit or condemn.

Nothing then was wanting:—a Prosecutor *undoubtedly in earnest*, and left to make such charges and produce such Evidence as he pleased—a Court perfectly impartial and perfectly competent—the best of all Witnesses, persons on the spot and perfectly intelligent. If a Judgment, pronounced under such circumstances, is not to be held decisive and satisfactory, there is no such thing as a decisive and satisfactory Judgment to be expected upon earth.

On the 7th of January the Court assembled on board the *Britannia*, and adjourned from thence to the Governor's house on shore. In reviewing their proceedings, I shall, according to my plan, first state the Charge, then give the facts that came out upon Evidence. But, as one of my principal objects is to set the calumnies of Sir Hugh Palliser and Lord North in their true light, and to shew how unjustly they accuse that Court for having censured the Accuser before them of Malice, it will be previously necessary to inform my readers, that the very first questions from the Prosecutor must have impressed the Court with the most unfavourable opinion of his *Motives*. The Charges he gave in for their enquiry were confined to the 27th and 28th

of July ; yet he began by examining his witnesses to the transactions that came within their observation from the 24th, and endeavoured to collect from their answers matter for crimination. Admiral Keppel, equally confident of having done his duty on those days, as on the days for which he was accused, disdained to oppose him.

C H A R G E.

“ That, on the morning of the 27th of July,
 “ 1778, having a Fleet of thirty ships of the line
 “ under his command, and being then in pre-
 “ sence of a French Fleet of the like number of
 “ ships of the line, Admiral Keppel did not make
 “ the necessary preparations for fight, *did not*
 “ *put his Fleet into a line of battle*, or into any
 “ proper order, either for receiving or attacking
 “ an Enemy of such force ; but, on the contrary,
 “ although his Fleet was already *dispersed*, and
 “ *in disorder*, he, by *making the signal for several*
 “ *ships of the Blue Division to chase to windward*,
 “ *increased the disorder of that part of his Fleet*,
 “ and the ships were in consequence more scat-
 “ tered than they were before ; and, whilst in this
 “ *disorder*, he *advanced to the Enemy*, and *made*
 “ *the signal for battle*. That the above conduct
 “ was the more extraordinary, as the Enemy’s
 “ Fleet *was not THEN in disorder*, nor beaten, nor
 “ flying, but formed in a *regular line of battle*,
 “ on that Tack which approached the British
 “ Fleet, *all their motions plainly indicating a de-*
 “ *sign*

"*sign to give battle ; and they edged down and attacked it whilst in disorder.*"

EVIDENCE.

It is not in the inventive Malice of any Human Being to frame a more false, insidious, and scandalous representation of events, unconnected with each other, and happening at different periods of time, than, as appears from Evidence, is contained in this clause of the Charge. The conduct which the Prosecutor represents as unaccountable, for the reasons which he here collects into one point, relates to transactions that took place at different hours from day-light on the 27th to half past eleven.

At the first of these periods it was incontrovertibly proved, that, instead of the French Fleet *being on that tack which approached the British Fleet*, both squadrons were on *the same tack*, standing to the northward, the Enemy near three leagues to windward, carrying a pressed sail to avoid an engagement. The whole stream of Evidence runs in favour of this assertion. There is not one opinion to the contrary. Every oath confirmed the industry with which the French Admiral seemed to avoid an action, from the morning of the 24th, when first he discovered the real strength of the British Fleet. Sir Hugh Palliser's own testimony, as it was read by one of the Members of the Court, and as it now stands on the Minutes, corroborated the

the fact. In the remarks of his Log-book, which it was proved he had revised, altered, added to with his own hand, and finally approved, it was said, that "the French had "stolen away under cover of a dark night, "after the two Fleets had been in sight of each "other four days, *in which time we used every "means to bring them to battle **, and thereby "crippled some of our ships masts, by carrying "sail, the French keeping directly to windward "of us."

At half past nine the French Admiral tack-
ed †. At a quarter past ten the British Fleet
went about, and stood after him, and soon af-
ter were enabled, by a shift of wind, to look up
to the Enemy for the first time. This shift
of wind was almost immediately followed by a
dark squall, by which the French, in pursuance
of their constant object, endeavoured to profit,
and to get their heads the other way. But, on
the weather's clearing up, in about half an hour,
they found themselves, in consequence of this
evolution, so close to the British Fleet, that they
were reduced to the alternative, of either giving
up some of the ships of their Rear Division ‡, or
of risking battle with our Center. Then it was,
upon the spur of that alternative, and not till
then, that *they partly edged down, and were
partly met by the British Fleet ||*. Then it was,

* Page 70.

† Mr. More, &c. &c.

‡ Sir John Lockhart Ross.

|| Captain Goodall.

after

after the firing had begun between the Enemy and the English Van, and not till *then*, that Admiral Keppel made the signal for battle. So unexpected was this rencontre to the French, that they began firing before they hoisted their colours *; and so desirous were they of escaping from it, that their Van, instead of coming into close action, kept their wind and passed out of random shot. That they were not *then in a regular line*, but, in considerable confusion and disorder, appears from the testimony of Mr. More, supported by Sir Robert Harland, Sir John Lindsay, and every Captain whom the Prosecutor questioned upon the subject.

The signal for chasing to windward, which Sir Hugh Palliser arraigns as a crime in the Chief Admiral, was proved to have been made in consequence of his own situation at day-light. It appeared from Evidence †, that he was much further to leeward than his station in the order of sailing prescribed; and that, instead of making sail to recover that station, he continued with his mainsail up, dropping still further to leeward, and thereby obliging the ships of his Division to stand under an easy sail, at too great a distance from the body of the Fleet. The first object with the Commander in Chief, therefore, was, to order him to close up with

* Mr. More, &c.

† Captain Jarvis,

the Center and Red Division. For that purpose, the signal was made for the best-sailing ships of the Blue Division to chase to windward, that the Fleet might be as well collected as it could, and near enough to assist and act with each other, in case a change of wind, or other favourable circumstances, should enable him to force the Enemy to action.

The unanimous Evidence of all the Captains of the Division, without one dissenting opinion, proved that this was perfectly understood at the time to have been the object of the signal *. It was proved that even Sir Hugh Palliser himself accepted it in that meaning, as he made a considerable deal of sail, as soon as the other ships had obeyed it.

To the happy effects of this signal, the whole body of Evidence bore equal testimony. Had the Admiral not made it, but in its place had substituted the manœuvre of the Line of Battle, which Sir Hugh Palliser makes it a capital crime in him not to have done, the French Fleet would never have been brought to action at all †. The weathermost ships of the English

* Captains Laforey and Jarvis, &c. Captain Bazeley himself acknowledges, p. 61, that, immediately on the signal being made, he set the mainsail, and let out two reefs of the topsail.

† Sir Robert Harland, Sir John Lindsay, Sir John Lockhart Ross, Lord Longford, Sir Richard Bickerton, and indeed all the Captains:

would

would have been necessitated to bear down to the wake of the leewardmost of the Blue Division, and the Chief Admiral would have found himself † *five leagues* to leeward of his Enemy.

C H A R G E.

“ By this un-officer-like conduct *a general engagement* was not brought on ; but the other
 “ *Flag-Officers and Captains were left to engage*
 “ *without order or regularity*, from whence great
 “ confusion ensued : some of the ships were pre-
 “ vented *getting into action at all* ; others were
 “ not near enough *to the Enemy* ; and some, from
 “ the confusion, *fired into others of the King's*
 “ *ships*, and did them *considerable damage* ; and
 “ the Vice-Admiral of the Blue was left to en-
 “ gage *singly and unsupported*. In these instances
 “ the said Admiral Keppel negligently performed
 “ the duty *imposed on him*.”

E V I D E N C E.

In direct contradiction to the first part of these words of the charge, the most incontrovertible Evidence was produced, that of the *Flag-Officer second in command*. He asserted, in confirmation of the testimony of all the *Captains*, that what the Prosecutor represented as want of order and regularity, was the only disposition the Admiral had in his power to make,

† Sir John Lockhart Ross.

to force the Enemy to battle. The confusion charged to have been in the British, he deposed to have been evident in the French Fleet; and, when called upon to state a single instance, in which he thought the Admiral had negligently performed any part of his duty, he deposed that "he knew of none, and therefore could "not state any."

If some of the ships were prevented getting into action, which the Vice-Admiral did not call a single witness to prove, it was the necessary consequence of the relative position of the French, as well with respect to each other, as to the British ships. Our Fleet neared them so fast, that they had not time to form their line from the evolution of changing their tack. Their Van was not connected with their Center, nor their Center with their Rear, as to distance or *direction*; and all were scattered to windward and to leeward of each other ‡.

In the remaining part of this article of the Charge, the Accuser of Mr. Keppel had two contradictory assertions to prove. First, that, from the confusion of the English Fleet, the ships were so huddled together, that they fired into each other; and then, that they were so scattered and separated, and came into action at

‡ Sir Robert Harland, Captain Digby, Captain Robinson, Sir John Lindsay, Mr. More.

such a distance from each other, that they could receive no mutual support;—that the Formidable, in particular, was left alone to engage singly, and unsupported. One included a manifest refutation of the other; but he equally failed in the proof of both.

It appeared, indeed, upon Evidence, that the Egmont had been fired into. But my Readers cannot form a more perfect judgment on the spirit which actuated this malicious Prosecutor, than from a plain state of the fact, as it was explained upon oath, on which he grounded this Charge †. It was an accident which must always happen when great Fleets are engaged. The Egmont fought a-stern of the Thunderer: when both ships were in the heat of action, and covered with smoke, Captain Allen shot up under Captain Walsingham's quarter. It was the business of a moment. Captain Walsingham was certain, that, after he saw the Egmont upon his quarter, there was not a gun fired into her from the Thunderer.

But what could have suggested an idea to the Prosecutor, that such an accident had happened in *others* of the King's *ships*? Captain Peyton, of the Cumberland, Captain Digby, of the Ramilies, Captain Jarvis, of the Foudroyant, Captain Goodall, of the Defiance, Captain

† Captains Allen and Walsingham.

Kingsmill, of the *Vigilant*, and the Master of the Duke, heard the question with astonishment. What could have led the Vice-Admiral to suppose that such an event had happened in those particular ships, and to connect it with particular attendant circumstances, in his interrogatories to these Gentlemen? And then, what were the considerable damages, even in the single ship thus accidentally fired into, on which he brings a *capital* charge against his Admiral? "The sheet-anchor was broke, two cutters were shot through †, some other shot in the ship's side, but not a man killed or wounded." Yet a Court of Honour shall be condemned for passing sentence of *Malice* on such a Prosecution!

That part of the Charge that respects the Vice-Admiral's being left alone and unsupported, was proved to be equally false. We trace him from one end of the line to the other, and do not find him a single moment without succour and protection.

The ship he began close action with was the *Bretagne* ‡. The instant before he opened his fire upon her, he crossed the *Terrible* §, in which

† Captain Allen.

‡ Captain Bazeley says the ship a-head of the *Bretagne*. Sir Richard Bickerton says, "she might have fired into the ships a-head of the *Bretagne*, but reserved her fire for the *Bretagne*."

§ Sir Richard Bickerton.

Sir Richard Bickerton was engaged with the ship immediately a-head of the Bretagne. At this time the Terrible, America, and Elizabeth, *were all three very near each other* *; and when the Terrible pressed so close upon the Formidable, as to be obliged to shoot a-head, in order to avoid being on board of her, she still found herself close to the America, which had also shot a-head †.

A-head of the Formidable, at this time, was the Ocean; *close* ‡ a-head of the Ocean was the Egmont, and of the Egmont the Thunderer. The Ocean was so near the Vice-Admiral, as *just to have room* || to engage between him and the Egmont. Captain Bazeley acknowledges that he backed his mizen topsail, for fear of getting into her line of fire, and by that manœuvre he, *at the same instant*, backed so close upon the Terrible as to compel her to shoot a-head, as we have already seen. In this situation the Vice-Admiral must have continued, with respect to the Ocean, all the time he was passing the French line; for Captain Laforey deposed, that when the firing ceased he was within three cables length of the Formidable; and, in an answer to a question from the Pro-

* Lord Longford and Sir Richard Bickerton.

† Sir Richard Bickerton.

‡ Captains Laforey, Allen, and Walsingham.

|| Captain Laforey.

secutor himself, he declared that during the action he was not generally so far.

A-stern of the Formidable, after the Terrible and America had passed her, was the Elizabeth †, and at a quarter past twelve so close as to be obliged to back her mizen top-sail. At *a quarter past one* she was equally near, with two ships in her rear, and exposed to no inconveniency for want of succour. At *twenty minutes past one*, Captain Bradby, in the Pluto fire-ship, who, as he was not engaged in the action, and was a little before the Formidable's lee-beam, without the range of gunshot, must have seen distinctly what passed, deposed that he saw the Vice-Admiral pass the Rear of the Enemy, and come out of action; and so far was he then from being unsupported, that there were two ships just a-head of him, and the Worcester immediately and close a-stern ‡.

Was it possible, after this fulness of Evidence, that the Court could ascribe this clause of the charge to any other motive but that of the blackest Malice, seeking, through every corner of its own dirty web, for matter to feed its venom? The charge alleged that the signal for chasing to windward had taken away the Vice-Admiral's ships, and left him to engage single

† Captain Maitland. The Formidable could not have begun close action before twelve.

‡ See Captain Bradby's evidence.

and unsupported, and in danger of being cut of : yet it was proved, by the Evidence of his own witnesses, the Captains immediately concerned, that these were the very ships that gave him immediate and uninterrupted support from one end of the French line to the other ; and that, if there were any ships that with any colour might be said not to have given him support, they were two of the ships that had not been ordered to chase by that signal. † The *Ramilies* and *Defiance* had not been taken from him : if they did not support him, the fault lay in himself. The Seventh Article of his Admiral's Fighting-Instructions ‡ had provided a signal to direct them to close with him.

This his own Captain acknowledged, at the same time that he confessed that every ship in the Blue Division had received effectual support and succour. § They had received support and succour from the other ships that had engaged before them. As the *Formidable* passed, several of the Enemy returned very little fire ; and one of them, that almost dropt aboard the Vice-Admiral, || was totally silenced.

† Captains Digby and Goodall.

‡ See Captain Bazeley's evidence, p. 58.

§ P. 62.

|| He also proved, that the Vice-Admiral did not engage a single ship which the *Victory* and the ships a-head of him had not engaged before him, having, as well as Mr. Keppel, reserved his fire for the *Bretagne*. What, then, becomes of that Officer's assertion in his Defence before his own Court-Martial, that he had fought with Seven ships *more than his Admiral*?

CHARGE.

“ That, after the Van and Center Divisions of
 “ the British Fleet passed the Rear of the Enemy,
 “ the Admiral *did not immediately tack* and double
 “ upon the Enemy with those two Divisions,
 “ and continue the battle ; nor did he collect
 “ them together at that time, and keep so near
 “ the Enemy as to be in readiness to renew the
 “ battle, as soon as might be proper.”

EVIDENCE.

The † Vice-Admiral of the Red, who led the Van, was proved to have *tacked immediately* with Seven ships of his Division. It was proved that he *stood* with them *towards the Enemy* with topgallant sails set. As for the Victory ‡, she was too much damaged to attempt to tack. She could not lay her head towards the Enemy by wearing till a quarter before two o'clock, though the Admiral § had made the signal for that purpose in ten minutes after he came out of action. The ships of the Center Division appeared all equally disabled. Not a single ship wore with the Victory ; nor, || except the Prince George, Bienfaisant, and Foudroyant, was there one of either the Center or Rear Division in a condition to join or support her

† Sir Robert Harland.

‡ Admiral Campbell, Captain Faulknor.

§ Mr. More.

|| Mr. More, and all the Captains.

all the time after she stood after the French: The Valiant wore about an hour after she came out of action.

But, even if the Victory could have wore, it was proved that the attempt would have thrown into inevitable confusion, as well the ships of the Van that were standing towards the Enemy, as those of the Center and Rear that were coming out of action. Sir † John Lockhart Ross attempted it in the Shrewsbury; but he was instantly compelled to wear back again, lest he should throw the whole Fleet into disorder. Those circumstances, therefore, which the Prosecutor would construe into neglect and criminality, the Court found were the rigid impositions of necessity, and beyond the power of skill or courage to remove or redress.

C H A R G E.

“ But, on the contrary, he stood away beyond
“ the Enemy *to a great distance*, before he wore
“ to stand towards them again, leaving the Vice-
“ Admiral of the Blue engaged with the Enemy,
“ *and exposed to be cut off.*”

E V I D E N C E.

This standing away beyond the Enemy *to a great distance*, is refuted by the answer to the

† P. 81, Admiral Keppel's Trial.

R

formel

former clause. * While the Victory's head was to the Southward, standing beyond the Enemy, she made very little way, and the whole time was scarce half an hour. Her wearing sooner was proved to have been neither expedient nor practicable. She certainly *left* the Vice-Admiral of the Blue *engaged*; but this was the necessary result of his situation. Was not the charge on this point *malicious*? Did not the Prosecutor know, that the two Fleets engaged on different tacks; and that ships in the Center must of course be out of action before ships in the Rear? Yet to this necessary circumstance he fixes a criminating imputation, by insinuating that he was *left abandoned* in the action, and exposed to be cut off. He could neither prove this danger he was exposed to of being cut off, nor ascertain the time of it. We have already seen proof adduced that it could not have been before the action began, nor during the action; and Captain Bazeley deposed † that they were in no danger afterwards.

The fact was, that the Vice-Admiral seemed not to have previously settled this point, as to time, with his Captain, with the same care and foresight as in other matters to which he meant to question him. Captain Bazeley stated it to

* Captain Jarvis, Walsingham, Leveson Gower, Faulknor, Admiral Campbell, Sir John Lockhart Ross, Mr. More, Mr. Rogers.

† P. 59.

have been *before he opened his fire*, and his Admiral meant that it should be applied to the *time* of his *second charge*, and as a consequence of the supposed errors he there enumerates. But his own Captain's confession, and the testimony of Sir Robert Harland, and of every officer who saw the Formidable after she came out of action, established the reverse,

Indeed, the Vice-Admiral's conduct plainly proved that he was resolved not to run any such risk. How does the fact stand in Evidence? When he passed the Enemy's line, * and saw the Commander in Chief, with the body of the Fleet, standing towards the Enemy, and not more than two miles distant from the Formidable, he very properly wore upon the Larboard tack also. By that means he got to his station in the line of battle, the signal for which was then flying on board the Victory, as well as on board the repeating frigate. Had he been at a less distance from the Fleet, and not sacrificed the duty of a General-Officer to an ostentation of bravery, (which, as it retarded his sailing, prevented him from closing up with our Center, and disturbed the regularity of the ships around him, was in him a fault,) there would have been nothing to reproach him with in this instance. But † observing, after he had remained some time in that

* Captain Bazeley, in answer to the Prosecutor's questions.

† Captain Bazeley.

position, that three of the Enemy's ships had wore to the Starboard tack, and *seemed to point* directly towards him, how did this * English Lion, this Bull-Dog, who so gloriously turned upon his Enemy, lay claim to that boast of exclusive courage and gallantry which his friends and himself have eternally in their mouths, as an excuse for all his crimes?

At that very time, the Victory, with the ships that had gone on the same tack with her, † were advancing towards him. They were nearer than those three ships of the Enemy were. He had also the Worcester to protect him—yet this Lion *fled*! He apprehended himself to be in such danger from the three strange ships, that he turned his stern upon them, forsook his station, passed by his Admiral, in defiance of the signal then flying, and never more pointed towards the Enemy that whole day.

“ But the Vice-Admiral did not see the signal “ for the line.” This he endeavoured to establish by Evidence. It was proved, that, if he did not see it, it was because he would not ‡. The repeating frigate had it flying during the whole antecedent period §. She had it flying

* See Governor Johnstone's Speech.

† See Captain Bazeley's Evidence, p. 54.

‡ In our observations on the Vice-Admiral's Defence, this point shall be fully established.

§ Captain Marshall.

upon both tacks, and at one time tacked with it close to the Formidable's weather-quarter.

But, supposing no such signal to have been made, still it was a flagrant breach of † discipline and neglect of duty to have fled from the Enemy, when he saw his Commander in Chief advancing towards him, and when he was himself in the proper station for forming the line of battle on that tack.

He acknowledges, nay he maintains, that, after he had passed the Victory, he saw and repeated that signal. Not one of the Captains of his Division, though they were regulating themselves by him, and consequently had their eyes invariably fixed on him, ever saw it during the course of the whole afternoon. But, allowing him to have established the fact, what did it prove? Another act of disobedience to the signals and orders of the Commander in Chief. He repeated the signal, he says; and yet there was incontestable proof that he never made the least effort to obey it. Such daring and contemptuous disobedience was never before so barefacedly claimed, as it were, and pleaded for, as a proof of assumed superiority, and a matter of triumph and boast.

† At least, it cannot pass unobserved, when he at that moment is accusing his Admiral of not advancing.

C H A R G E.

“ That, after the Vice-Admiral of the Blue
 “ had passed the last of the Enemy’s ships, and
 “ *immediately wore*, and laid his own ship’s head
 “ towards the Enemy again, being then in their
 “ wake, and at a little distance only, and expect-
 “ ing the Admiral to advance with all the ships
 “ to renew the fight, the Admiral did not ad-
 “ vance for that purpose, but shortened sail, and
 “ hauled down the signal for battle.”

E V I D E N C E.

The first part of this clause contains a pom-
 pous panegyric on the Prosecutor, in order to
 make his Admiral appear the more culpable by
 subsequent comparison. While he laboured to
 establish the fact, he involved himself again
 in the proof of contradictory propositions, simi-
 lar to those to which the Court frequently saw
 him call his witnesses with the most impudent
 forgetfulness and steady effrontery. Here we
 find him arrogantly contrasting his own skill,
 bravery, and merit, with the imputed ignorance,
 backwardness, and guilt, of his Commander in
 Chief. No sooner had he passed the Rear of the
 French Fleet, than he wore *immediately*—wore
 without the least difficulty, or delay:—like a
Bull-Dog turning upon his Enemy. He felt his
 courage and strength equally unbroken, and ex-
 pected the Admiral to advance with all the ships
 to renew the fight. But, unfortunately, in call-
 ing

ing witnesses to prove that his Admiral did not advance, it appeared, from their unanimous Evidence, that his Admiral *was advancing with all the ships he could collect*. Nay, he acknowledged himself, that he and his Captain saw him, at that very point of time, advancing with *the body of the Fleet* then with him*. It was proved that he was advancing to *renew the attack*. The most effectual and compulsatory of all signals for that purpose was then flying on board his ship—but it was at the same time proved, that the Vice-Admiral of the Blue, this Bull-Dog, at that instant *wore again* with equal facility and alertness, turned his back upon his Enemy, and his head to his Admiral, met him, stood on beyond him to a *great distance*, and never once attempted to face his Enemy, though repeatedly called to his station by signals, and by message.

Here, then, is an accusation started against himself. How is he to set it aside? We shall see

* P. 54, col. 1, the Prosecutor asks Captain Bazeley, “ When the Formidable ceased firing, do you remember you and myself taking notice, that the Admiral with the body of the Fleet then with him were standing *towards us*, and that I therefore ordered the ship immediately to be *wore* ? Answered in the affirmative.” It is therefore manifest, that, in this boasted act of gallantry, the Vice-Admiral only *followed the example* of his Commander in Chief. Hitherto all was well. The station he took by wearing was his proper station. But immediately after happened the blast of powder that killed or wounded 27 of his men. From that moment all appears to have been terror, confusion, and disorder.— This is a conjecture, and the only way we can account for his conduct, except indeed by wickedness of intention, or gross cowardice,

that

that he *can turn, and turn, and yet go on, and turn again*. Forgetting his animosity against Mr. Keppel for the moment; and attentive only to exculpate himself, he calls witnesses to prove that his ship was so disabled as not to be in a condition even to go before the wind, and come into her station; that she might indeed receive an attack from any ship that would be complaisant enough to lie along-side of her; but that she could not keep her station * in the line between two ships; that the ship's company was incessantly employed in repairing her damages, the whole afternoon; and that it was ten o'clock in the evening before the Formidable made sail to take her station.

Which fact are we to admit on his own representation? If the Formidable was not in a state to renew the attack, then his turning his head to the Enemy after he had passed them, and doubling upon them like a British Bulldog, *that he might have another bout with them*, was a ridiculous gasconade †. If she *was* in a condition to renew the attack—if she *were twice* with ease, at the moment when it was proved that most of the Fleet were incapable of wearing,

* Captain Bazeley, Lieutenants Waller and Kinneer.

† How far this unmeaning rant of Governor Johnstone's answered the purposes of Party, we have had too fatal experience. He would have been laughed at, if he had dared to put such a construction on this part of the Vice-Admiral's conduct before an assembly of Sea-Officers.

then

then the Vice-Admiral turning his back upon the Enemy, while the Commander in Chief, collecting the fleet, and with such as were able to support him, was standing towards them, was the direct reverse of the spirit of the *Lion* or the *British Bull-Dog*—then his not obeying the repeated signals, or the personal message, calling him into his station, is an avowed act of disobedience, and an open contempt of discipline—then all the failure of that day, the *most unfortunate day that this country ever saw* *, the not renewing the attack, the escape of the Enemy, the criminal omission of doing the utmost to take, sink, burn, or destroy the French Fleet, with all the fatal consequences, and † the incredible lesson taught to France, that on a summer's day her Fleet could engage a British Fleet, superior in every respect, and get safe into port, are solely to be ascribed to the wilful, deliberate guilt and treachery of the *malicious Prosecutor* of Admiral Keppel.

What the Prosecutor calls a shortening sail, and a crime in his Commander in Chief, was proved to have been a repair of sails essentially necessary to the Victory, and of no detriment whatever to the business of the moment, as it put it more in the power of the ships a-stern of him to get into their stations ‡.

* See Governor Johnstone's speech.

† Ibidem.

‡ Admiral Campbell, Captain Faulknor.

The last accusation implied in this clause, is that the Admiral *hauled down the signal of battle*. The signal of battle was certainly hauled down immediately after the firing ceased *. It was hauled down not only as useless, but as improper to be flying : the ships were then out of fighting distance, and no Commander ever made that signal when not in that distance. But the signal for the line of battle was instantly hoisted ; the only signal then proper to be made, in order to collect the Fleet to renew the attack,

C H A R G E.

“ Nor did he at that time, nor any other time,
 “ whilst standing towards the Enemy, *call the ships*
 “ *together to renew the attack*, as he might have
 “ done, *particularly the Vice-Admiral of the Red,*
 “ *and his Division*, which had received the least
 “ damage, had been the longest out of action,
 “ were ready and fit to renew it, were then to
 “ windward, and could have bore down and
 “ fetched any part of the French Fleet, if the sig-
 “ nal for battle had not been hauled down, or if
 “ the said Admiral Keppel *had availed himself of*
 “ *the signal appointed by the 31st Article of the*
 “ *Fighting-Instructions*, by which he might have
 “ ordered those to lead, who are to lead with
 “ the Starboard Tacks on board by a wind, *which*
 “ *signal was applicable to the occasion* for renew-
 “ ing the Engagement with advantage, after the

* Capt. Faulknor, Admiral Campbell.

“ French

" French Fleet had been beaten, *their line broken*
 " *and in disorder*. In these instances he did not
 " do the utmost in his power to take, sink, burn,
 " or destroy the French Fleet, that had attack-
 " ed the British Fleet."

EVIDENCE.

We have seen the first part of this clause already refuted by Evidence. We have seen it proved that the Admiral at all times took the most effectual method that either skill or courage could suggest *to call the ships together to renew the attack*—that he did all that *might* or ought to have been done in such circumstances. But where the Prosecutor accuses him of having omitted issuing the orders which he presumes to say he should have sent to the Vice-Admiral of the Red, the most satisfactory Evidence I can lay before the Public, is the Evidence of that great and experienced Officer speaking for himself on his oath. He affirmed that *most certainly and most truly* the Admiral had not ships with him in a line, or so connected as to have given support to the Van, if, as Sir Hugh Palliser pretended he ought to have done, the Admiral had directed the Red Division to lead upon the Enemy. Had orders been sent to him to go down, as the Vice-Admiral says orders should have been sent, he would doubtless have obeyed; * "but the French
 " ought to have been hanged, if they had not

* P. 118.

"beaten him and the ships of his Division *." As to the French Fleet being broken and disordered at the point of time insisted on by the Vice-Admiral of the Blue, he saw no such confusion; yet he was in the most likely point to see it, if it had existed. "They were performing," he said, "a well-regulated manœuvre."

That the signal appointed by the 31st Article of the Fighting-Instructions was not applicable, was proved by men † whom I shall not degrade by a comparison with the Prosecutor either in point of knowledge or experience. The veteran and able Officers who composed the Court-Martial have proved by their decision that they and I think alike on that subject ‡.

C H A R G E.

"That, instead of advancing to renew the engagement, as in the preceding articles is alleged and as he might and ought to have done, the Admiral wore and made sail *directly from the*

* This is further confirmed by the Evidence of Sir John Lindsay, Sir Charles Douglas, Captains Cosby and Nott, Sir John Hamilton, and Captain Prescott.

† Admiral Campbell and Mr. Keppel.

‡ It should be observed, that the only witness to whom the Prosecutor put a question about this 31st Article was Sir William Burnaby, a Captain of a Frigate. The Court and the Audience testified such astonishment to hear a Flag-Officer betray such ignorance as to suppose it applicable in the position the two Fleets were then described, and a Post-Captain answer him in the affirmative, that he never more mentioned it.

"*Enemy;*

" *Enemy*; and thus he led the whole British Fleet
 " *away from them*, which gave them the oppor-
 " *tunity to rally unmolested*, and to form again
 " *into a line of battle, and to stand after the*
 " *British Fleet.*"

EVIDENCE.

That the Admiral neither might nor ought to have renewed the engagement at the time alluded to, I refer to the Evidence already produced. His sailing directly from the Enemy was refuted and reprobated with indignation, by the unanimous deposition of the Vice-Admiral of the Red and all the Captains of the Fleet. The movement, on which the Prosecutor attempted to fix this disgraceful and malicious imputation *, was proved to have been a well-judged and necessary manœuvre, to prevent a design which the Enemy discovered to *affront* the English Admiral, by an attack on some crippled ships of the British Fleet that lay to leeward.

The French Fleet, after having wore to the Starboard Tack †, being prevented by the Vice-Admiral of the Red, with his Division, from attempting our Center, edged away, pointing towards four or five of the disabled ships ‡ with evident intention to have separated them from the rest of the Fleet. To check such an insult,

* Captains Jarvis, Kingsmill, Sir C. Douglas, Sir John Hamilton, Cosby, Nott, Prescott, Wallingham, &c,

† Sir John Lindsay.

‡ Sir John Lindsay, Admiral Campbell, Mr. More.

with-

without the loss of a moment, the Admiral made the signal to wear, and stood athwart the Van of the Enemy, in a diagonal course. We have already seen that the Vice of the Blue was proved to have deserted his station a-head of his Admiral on the Larboard Tack, and that he was followed by the Worcester beyond the Victory. When, therefore, this design of the Enemy had made it necessary to wear on the Starboard Tack, the Rear of our Fleet remained uncovered, and the Admiral himself was left unsupported, and * within the power of the whole French Fleet a-stern of him.

The signal of the line was at this time flying; and the Vice-Admiral of the Blue, with his Division, were under orders, by that signal, to take their station a-stern of the Admiral. But as no efforts were made to obey it †, Captain Sutton, of the Proserpine, was dispatched with orders to the Vice of the Red, to supply their place, and keep the Enemy in check, till the Blue Division should form, and take their posts. Sir Robert Harland deposed, that he was, at his own risque, taking post a-stern of the Victory, before he received the Admiral's orders for that purpose by the Proserpine. He

* Sir R. Harland. Captain Walsingham observed to his Officers, "that he thought the Admiral went down to protect those ships very much unsupported." The Vice of the Blue had fled from the post where he might have covered him.

† Captain Sutton, Admiral Campbell, Mr. More, &c.

thought

*thought himself happy * to assist his Commander in Chief, when he saw it necessary, without tamely and cautiously waiting for official commands, or shaping his conduct by the mere letter of written instructions. He thought it his duty to render all possible service to the FLEET, while he had any command in it. He saw the urgent necessity of the moment now under consideration, and he was impelled to the measure he was pursuing in consequence, by that † Order that supercedes all others, that of succouring his Admiral when in distress—He saw his Commander in Chief, unsupported, within the power of the whole French Fleet a-stern of him ‡. He added, that, if after he had taken his station in the Rear of the Victory, he had seen the Vice of the Blue bear down with his Division, he then would have made sail again with the Van, to take his own post, without waiting for orders. The same reason that he gave for going into the Rear of the Fleet, would have carried him into the Van of the Fleet, for the service of the whole.*

By pushing this point in the fruitless, though malicious, hope of making good his Charge against the Admiral, the Prosecutor laid open

* How different are such sentiments from those that evidently actuated the Governor of Greenwich Hospital!

† An order which the Vice-Admiral of the Blue had disobeyed, by quitting his station a-head of the Admiral, when next to the Enemy, and passing him to leeward,

‡ Page 118, col. 1.

to the Court, and to this injured Nation, the real cause of all the mortification and disappointment of the 27th of July.

The course the Admiral steered to protect the crippled ships, was bringing him every moment nearer to the Enemy. The Vice-Admiral of the Blue still continued to lie to windward, regardless of the signal for the line that was flying all the time, calling him into his station. The Captains of his Division were regulating themselves by him; and his act of Disobedience kept them from joining the Admiral. In this anxious and important moment, the Commander in Chief was willing to make every attempt that might draw the attention of the Vice-Admiral, and testify his impatience; he therefore proceeded to try the further expedient of making the signal for ships to windward to bear down into the Victory's wake. But this signal also the Prosecutor not only dared to disobey in his own ship, but, by * repeating it, and not bearing down himself, he led the Captains of his Division to interpret his repeating it into an order for them to come into his own wake, and not the Admiral's. By this means he again succeeded in frustrating the intentions

* He could never prove that he had repeated the signal for the Line; and when he attempted to prove it on his own trial, we shall find that he made it on the Larboard Tack, immediately after coming out of action.

of the Commander in Chief. * It was at this time evident to the whole Fleet, that the junction of the Blue Squadron was all the Admiral waited for to bear down upon the French Fleet, and renew the battle. All was astonishment on board the Victory. No signal, however pressing or particular, could produce the least effort in the Formidable to resume her station. No intimation whatever was given of the cause of such neglect and inaction; no signal of distress; no shifting of the Flag. The only conjecture they could form was, that the Vice-Admiral must have been wounded, or that the Formidable ‡ *would never have behaved so.*

In the mean time the Admiral's patience was wearing out with the day. He tried every further expedient. § He ordered the Van to stretch a-head into their proper post; he hung out the signal for all ships to come into their station; and sent Captain Windsor, in the Fox, with a message to the Vice-Admiral of the Blue, with orders to him to bear down into the Victory's wake, and to tell him that *he only waited* for him and his Division to renew the attack. Admiral Campbell added, "and tell him *we have been long waiting for him.*" This

* Admiral Campbell, Sir John Lindsay, Laforey, Walsingham, M'Bride, Leveson, Prescott, &c,

‡ Admiral Campbell.

§ Sir Robert Harland, and Sir William Burnaby.

message was delivered to the Vice-Admiral himself: but it produced no effect; he persisted in his Disobedience, and the Captains of his Division dared * not move from his Flag. Wearied out with fruitless expectation, the Admiral, at seven o'clock, † hung out the signal for each particular ship of the Blue Division to come into her station; but, before they could accomplish it, night put an end to all further operations, and all further hopes. The glorious opportunity of crushing the naval power of France in its first exertions, returned no more; and the Vice-Admiral of the Blue was, by this Evidence, pointed out to the Court as the sole cause of that failure, which he was maliciously endeavouring to fix upon his Commander in Chief.

Compelled thus by Evidence, established in answer to his own questions, he no longer appeared to the Court in the character of a Prosecutor. His subsequent questions were the questions of a Criminal, labouring to establish his own defence,

In the libel which he had published against his Admiral in the Morning Post of the 4th of November, he had asserted, that it was apparent to the rest of the Fleet, if it was not so to

* Captain Allen.

† Captain Marshall, who commanded the repeating frigate; and indeed all the witnesses.

those

those in the Victory, that the Formidable was not in a manageable condition---that she was employed in putting herself into a state to *get up* with the Admiral. This * he now attempted to confirm before the Court; but it was proved, by a cloud of witnesses, that his incapacity was no more visible to *the rest of the Fleet*, than it was to the Officers of the Victory. † On the contrary, they deposed, that, from any thing they saw, they were as ignorant of his reasons for not bearing down into his station, in obedience to signals, as they were convinced that the Admiral only waited for him, and his Division, to renew the attack.

There were two points which he particularly laboured. The one was, that the Victory carried so much sail, that he was not able to *get up* with her. This was proved to be absolutely false. He was all the time well *up* with the Victory ‡. Captain Faulknor, anxiously looking towards the Formidable, with Admiral Campbell, plainly distinguished the intervals between her lee-ports open to the

* In this attempt to labour out his own defence, he was candidly indulged both by the Court and Prisoner; yet in his printed Speech he complains that he was denied the opportunity of convincing his innocence.

† Sir Robert Harland, Sir John Lockhart Ross, Sir John Lindsay, Sir Charles Douglas, Sir John Hamilton, Captains Allen, Jarvis, Wallingham, Laforey, Leveson Gower, M'Bride, &c. &c.

‡ The Formidable's station in the line was the ninth or tenth ship a-stern of the Victory.

M 2

Victory.

Victory. Captain Leveson frequently cast his eye upon her, as he walked the quarter-deck of the Valiant, then in her station in the Center Division, a-head of the Victory. She must, therefore, have been greatly a-head of her proper post in the Line, in point of length; and, as she was proved to have been all the time directly to windward of her station, she had only to bear down, and resume † it. That she required no repairs to enable her to do this was evident, from her having before wore twice, and failed each time mostly close to the wind. She had received no fresh damages in the interval; all her masts and yards were in their places; nor was there an eye in the Fleet, that could discern a single obstacle to her obeying the signals.

That the Victory carried much sail, had indeed been inserted in the Log-book of the Robuste; "too much for so disabled a ship" to keep exactly in her station." This insertion Captain Hood acknowledged he ordered to be

† Captain Laforey, who had stayed by him all the afternoon, because he did not think himself authorized to leave the Commander of his Division, says, that, in taking his station in the evening, he bore down from the Formidable's lee-quarter, almost right before the wind. And Captain Bazeley being asked how many points he should have gone from the wind in coming into the Line, supposing the Victory to be going at the rate of two knots and a half, (which it was proved was the most she ever went,) he answered one point, or a point and a half.

made himself on the 12th of December. He made it, he said, for his own protection—“ He did not know but he should appear at the bar of a Court-Martial himself, as a prisoner, not as a witness.” It was proved, to a certainty, that at that time he knew Mr. Keppel’s trial had been ordered.

But whatever were his motives for the insertion, (and they could not have escaped the conviction of the Court-Martial,) the purport of it was proved to be false, in fact, by a cloud of witnesses. So far was the *Robuste* from not being able to keep her station with respect to the *Victory* †, that at day-light the next morning she was found to have shot some miles a-head of it; and was seen a-breast of the Vice Admiral of the Red’s Flag-Ship, then in her station in the Van ‡.

The other point which the Prosecutor laboured to establish in his own vindication, was the falsity

† Lieutenant Lumley.

‡ The sail carried by the *Victory* in the afternoon, was double-reefed topails and a foresail. *Capt. Faulknor*.—It was proved by Sir J. Lindsay, Captains M’Bride, Laforey, Prescott, Walsingham, &c. &c. that this sail was barely sufficient to enable the other ships to be properly managed, and that it could not prevent any ship from keeping her station. The sail she carried during the evening, was two treble-reefed topails, the foresail, mizen, and mizen stay-sail; the mizen top-sail was handed, as usual, before the day closed. *Admiral Campbell*.—Till the mizen sheet was hauled aft about seven bells, she scarce had steerage way, for want of after-sail. *Mr. Stoney, Lieutenant of the watch.*

of

of the Admiral's message by the Fox, both as to time and substance.

In the libel already alluded to, he had asserted that this message was delivered *at night*; that the purport of it was, that the Admiral wanted the ships of Sir Hugh Palliser's Division to come into his wake; but said not a word about his waiting for them, in order to renew the attack. Captain Windfor, he said, was answered by himself from the stern gallery, in these words, *Acquaint the Admiral I have repeated his signal for it. It then was dark.*

To the purport of the message, as delivered to him, he did not call a single witness *. It was hatched in the malignant privacy of his cabinet; he wisely placed the scene in the solitude of his own gallery. The two witnesses whom he called to the time, both gave the lye to his assertions. Captain Bazeley stated it to have been *before sunset*; Lieutenant Kinneer about *seven*; both, at the same moment, protesting, that they could not speak to time with the least exactness.

Fortunately, on the quarter-deck of the Fox were a number of young men of high birth, unful-

* I mean, he did not call a single witness to this point, on Admiral Keppel's trial. On his own, he called a Midshipman and the Captain's Clerk. It will be proper to observe, that I strictly confine myself, in this part of my subject, to what appears on the Minutes of the first trial. When we come to Sir Hugh Palliser's Defence, all those points that go to his crimination will be much more fully discussed.

lied honour, of minds too unpractised, and spirits too ardent and active, for the cold and cautious plans of concerted misrepresentation ; and whose veracity has never been impeached but by him, who, on the records of that service, which some of them have since dignified by their gallant conduct, stands convicted of *malice and falsehood*.

At the head of these was Captain Windsor.— He deposed, that the orders he received were, to stand towards the Formidable, with Admiral Keppel's compliments to Sir Hugh Palliser, "and " to acquaint him, that he only waited for Sir " Hugh Palliser and his Division bearing down " into his wake, for him to renew the attack." This message he delivered *word for word, nearly about half an hour past five o'clock*. He repeated it twice to *the Vice-Admiral himself*, and was twice answered by *the Vice-Admiral himself*, that he understood him very well.

Lieutenant Bertie confirmed, by his deposition, the purport of the message, and that it was received and delivered in the same precise words. But he further added, that, not content with having delivered it himself, Captain Windsor ordered him to take the trumpet, and repeat it. He repeated it twice more. The answer each time from the stern gallery was, " Sir, I understand you perfectly." He also stated the time to be near six,

Mr.

Mr. Courtney swore to the words of the message, and deposed, that the time was between five and six. The answer he could not recollect.

The Evidence from the Victory was no less respectable or conclusive *. Admiral Campbell, Captain Faulknor, Lieutenant George Berkeley, Sir Jacob Wheate, Mr. Calder, Mr. Rogers, Mr. More, all concurred in testimony with the Gentlemen of the Fox; *some* as to the *purport* of the message, *all* as to the *time* of the delivery. The Court Martial had but two points left for their determination—either that all these Gentlemen were shamefully perjured, or that the man who could institute and persevere in such a prosecution was worthy of exclusive credit.

C H A R G E.

“ This was disgraceful to the British Flag;
 “ for it had the appearance of flight, and gave
 “ the French Admiral a pretence to claim the
 “ victory, and to publish to the world, that the
 “ British Fleet ran away, and that he pursued it
 “ with the Fleet of France, and offered it battle.”

* The Formidable's Log book, as it had been read to the Court, and was proved, upon the oath of the Master, to have been altered, added to, and approved by Sir Hugh Palliser himself, was a convincing testimony as to the time. It says, “ At *six* P. M. the signal was made for our Division to bear down in the Admiral's wake; and the Fox came under our stern, and told us, the Admiral desired the ships of our Division to bear down under her stern.”

E v t-

EVIDENCE.

The premises from which the Prosecutor draws these conclusions are, the Admiral's *making sail directly from the Enemy, leading the whole British Fleet away from them, suffering them to rally unmolested, to form again into a line of battle, and to stand after the British Fleet.* The manœuvre which he dared to represent in so ignominious a light, we have already seen explained by the fullest Evidence. It was proved to have been a *necessary manœuvre, well executed by the Victory; the very reverse of a flight, as it was nearing the Enemy* †. To that alone, and to the judicious position which Sir Robert Harland took with part of his Division, it was owing, that the French Fleet were prevented from advancing upon the British Fleet at a very critical time ‡. It was proved, that the Admiral never had it in his power to prevent the Enemy from forming into a line of battle. He admitted himself that he did not prevent them, and the reasons assigned for it by Sir Robert Harland were confirmed by the unanimous deposition of all the witnesses. "It was no more," he said, "in the Admiral's power to prevent the French from forming their line on the starboard tack, than it was in his power to have collected ships to have done it with."

† Captain Clements.

‡ Captain M'Bride. See also Captain Leveson Gower, Sir John Hamilton, Captains Edwards, Nott, Allen, Sir John Lockhart Ross, Peyton, Jarvis, Prescott, &c.

That clause that affirms *the French Fleet to have stood after* the British, cannot be better explained than by selecting the Evidence of Captain Hood, *of the Robuste*. The Prosecutor, or his advocates, cannot certainly object to this. No man was more his friend—no man took so much pains to serve him : his zeal and his exertions are equally upon record, and both will be remembered as long as there is a Log-book in the world.

* Court asks,

Q. In the situation you have described the English and French Fleets to be at the time they were standing in parallel lines to each other, the British Fleet to windward, and the French to leeward, do you think the Admiral of the British Fleet was then flying from his Enemy ?

A. *At that time*, to be sure, there was no appearance of flight.

Q. At any time during the day, or while the French Fleet were in sight of the British, did the Admiral shew any sign of his flying from the Enemy ?

A. There was no moment of the day, but what you described, that can convey such an idea.

Q. The reason for asking that question was, because you said *at that time*, which does allude to another.

* Page 31.

A. Then

A. Then I beg to have that altered; the former part of the day was *pursuit*.

Thus we find the real situation of the two Fleets confirmed to the Court by the reluctant and hard-wrung evidence of the Prosecutor's bosom-friend and counsellor. The Admiral bearing down to protect his crippled ships; nearing by that course the Enemy, whom, it was evident to every Captain in the Fleet, he meant to engage; the signal for the line of battle flying all the time, to collect his scattered ships, and to form the most effectual disposition to bring on a general and decisive action; the Victory carrying so little sail as to enable the French Fleet to range on a parallel line * with it to leeward, some of them under their topsails, and to keep their Van nearly a-breast with our Center;—this masterly manœuvre, that commanded the applause of the most experienced officers of the Fleet, that served

* Captain Peyton, one of the *Prosecutor's* witnesses, represented this appearance of the Enemy as offering battle; but he, at the same time, acknowledged, that all he meant was, that they shewed an inclination to *receive* it, confessing, at the same time, that the English Fleet were not in a condition to *give* it. That the French Admiral could have renewed the action at any hour he chose, and fetched within pistol-shot of our Fleet, was a truth as universally established by evidence as any that appeared on the trial. The British Fleet was at this time proved to have been under topsails, or topsails and foresail. The necessary measure of wearing to the Southward, laid, *unavoidably*, some of the ships sterns to the Enemy. If any man, even *Commodore Johnstone*, should describe such a situation as a Flight, he would be laughed at by the most ignorant seaman of the Fleet.

most to realize the expectations they had formed of the judgment and abilities of their Commander in Chief—this manœuvre a Flag-Officer, under his command, dared to arraign, in the presence of the assembled Navy of England, as disgraceful to the British Flag—as bearing the appearance of *a flight*—as giving the French Admiral a pretext to claim the victory, and to publish to the world that the British Fleet ran away, and that he pursued it with the Fleet of France! With what *indignation* did the British Captains hear the degrading question put to them? † In what strength of terms did they *reprobate the idea*! How did they hang their heads in shame and confusion, when they saw an Officer, under whose flag they had served, a Vice-Admiral of the Fleet, a Lord of the Admiralty of England, endeavour to fix such an indelible stain on the honour of their profession, and on the national glory and character, for the horrid purpose of his private revenge!—“‡ Thirty years,” answered one of them, “have I been in the service, and I never “saw an Englishman run from a Frenchman.” He has, however, lived to see it; and sure I am, I can answer for that gallant veteran, that he now would think himself happy if the hour on which he made that declaration had been the last of his life. He can no longer hope to find solace and

† Sir Robert Harland, Captain Walsingham, Captain Jarvis, Captain Allen, every Captain in the Fleet, in terms more or less expressive of their astonishment and dissent.

‡ Captain Nott, Exeter.

comfort for his past toils and labours in the service of his country, in that glorious reflection. He *has seen* the Fleet of England fly before the Fleet of France. When that gallant Admiral, "† under whom it was the greatest pride of his heart to serve," was driven from the Command; when the great and experienced Officers, bred in the same school, and to whom the Navy could look up with equal confidence and veneration, were compelled to relinquish the service; when all the ancient bounds of subordination and discipline were broken down, and disobedience and contempt of orders were officially rewarded; when persecution and oppression pursued all the Officers who either gallantly seconded the efforts of his Admiral on that day, which his great abilities promised to render glorious in the annals of his country, or, by their honourable testimony, stood between him and the vindictive Malice that thwarted and frustrated all his designs; when criminating duplicity, and recorded guilt, received the rewards of merit and integrity, then it was that this gallant veteran first saw the honour of the British Flag tarnished; then was it first published to the world that a § French Fleet had chased the Fleet of England, insulted our very ports, and spread universal terror and alarm along our coasts.

† Evidence of Captain Nott, p: 159.

§ The disgraceful campaign of 1780.

CHARGE

C H A R G E.

“ That, on the morning of the 28th of July,
 “ 1778, when it was perceived that only three
 “ of the French Fleet remained near the British
 “ in the situation the whole had been in the
 “ night before, and that the rest were to leeward,
 “ at a greater distance, not in a line of battle,
 “ but in a heap, the Admiral did not cause the
 “ Fleet to pursue the flying Enemy, nor even
 “ to chase the three ships that fled after the rest;
 “ but, on the contrary, he led the British Fleet
 “ another way directly from the Enemy.”

E V I D E N C E.

On the night of the 27th the French Fleet fled for Brest. On the 28th in the morning they were only discernible from the mast-heads of some part of the British Fleet *. Three, however, remained in sight on our lee-quarter, at the distance of more than four miles from the nearest of our ships. The ship a-breast of the Bienfaisant was a line-of-battle ship, the next was a frigate, and the other Captain M'Bride could not judge of. The signal for chasing these ships was made for the Duke, Bienfaisant, Prince George, and Elizabeth.

The three strange ships were proved to have carried † their topgallant studding sails, while ‡ the Prince George and Elizabeth could not carry

* Captain M'Bride. † Captain Walsingham.

‡ Sir John Lindsay, Captain Mairland.

fail enough even to countenance the pursuit, and were declared by their Captains to be incapable of chasing. The same was equally proved of far the greatest part of the Fleet. The inutility of either a partial or general chase, in the crippled state of our ships, and the impossibility of coming up with an Enemy that had got so far the start, who had such a short distance to run for their port, and who had all the additional advantages of completer rigging, a fair wind, and a high swell setting in upon their coasts, were clearly and satisfactorily proved by all the Captains and Masters of the Fleet.

After these facts had been clearly established by the testimony of the Prosecutor's own witnesses, the Admiral laid before the Court the motives of his subsequent conduct. "As to my conduct," said he, "after the engagement, I might have pursued a fruitless and a most hazardous chase of some few ships, if I had had my mind filled with notions unworthy of my station. I might easily have paraded with my shattered fleet off the harbour of Brest.—I chose rather to return to Plymouth with all expedition, to put myself once more in a condition to meet the Enemy, and defend the kingdom. But, on my return, I took care to leave two men * of war of the line and two

* The Valiant, Captain Leveson Gower ; and the Bienfaisant, Captain M'Bride.

" frigates

“ frigates on a cruize to protect the trade *.
 “ By the vigilance of the commanders, and the
 “ happy effect of the late advantage, the expect-
 “ ed Fleets all came in safe.”—See Admiral
 Keppel’s Defence, page 107.

CHARGE.

“ By these instances of misconduct and neg-
 “ lect, a glorious opportunity was lost of do-
 “ ing a most essential service to the state, and
 “ the honour of the British Navy tarnished.”

EVIDENCE.

The complete body of Evidence was now be-
 fore the Court, and their sentence has shewn
 that they judged the conclusions contained in
 this last clause to have been as false and ill
 grounded, as the premises were proved to them
 to have been. They found that the Prosecutor
 had not only failed to substantiate a single article
 of his charge, but that all his labours (and his
 labours were not spared, God knows) ended in
 the establishing the direct reverse of his assertions.
 It was proved to them, that the signal for chas-
 ing to windward, to which he attributed the
 first supposed failure of the 27th of July, was
 the only movement that could have possibly
 brought his own Division into action;—that the
 manœuvre, which he represented as a disgraceful

* Commodore Johnstone asks what convoy did the Admiral pro-
 tect? The Valiant brought a West-India convoy in with her, in
 consequence of being left at sea for the purpose.

flight,

flight, was the pride and ornament of the day, happily conceived in the critical moment of danger, embracing in its consequences the two great objects of protecting the disabled part of the British Fleet *from affront*, and forming at the same instant, and by the same evolution, a proper disposition to bring on a general and decisive engagement; executed by the Admiral in the boldest spirit of enterprize, and with the most happy display of skill and ability, and seconded with the most exemplary promptitude and obedience by the Vice-Admiral of the Red;—that the danger of the Formidable's being cut off, on which he laid such criminating stress, and on which he endeavoured to raise to himself a monument of courage and gallantry, to the exclusion of the rest of the Fleet, was only visible to himself and his Captain; and that there was not a moment in the day in which he was not ably and effectually supported.

The *spirit* of the Prosecutor had also unfolded itself to their view in the most striking and obvious colours; and it was not possible but the impressions it made must have obtruded themselves upon their judgment, on a review of several correspondent particulars that appeared on the face of the Evidence †. They met, almost in every page, questions supposing facts that were

† See the Evidence of Captain Marshall, Captain Digby, Captain Hood, Lord Mulgrave, Captain Jarvis, &c. &c.

never admitted, endeavouring to steal assertions upon the witnesses which they had never made, and on these imputed assertions grounding new matter of crimination. They saw that early in the trial the Vice-Admiral forgot the light in which he appeared before them; that his own Conscience forced him to their bar as a *Criminal*, not as a *Prosecutor*; and that most of his questions were directed to his own exculpation, while the accusation of his Admiral was brought in, as it were, by a side-wind, and merely to prevent them from losing sight for a moment of that furious spirit of *malice* and resentment, that had called them from their duty, to attend to its black and malignant suggestions.

They found, that several of those questions were so contradictory to each other, that the affirmative of one must have necessarily proved the negative of others, whilst all were put to the witnesses with an equal appearance of conviction and truth from the Prosecutor:—that all were answered to his own disgrace; and that they fastened upon himself the very crimes he had undertaken to fix on his Commander in Chief. They found by them, that a glorious opportunity had been *indeed* lost of doing a most essential service to the State;—but they were not appointed to try Sir H. Palliser, or to pass judgment upon his crimes. He was self-produced at their bar, and not from any legal authority; and they were, as it became them, most scrupulously

puloufly careful not to transgress the strictest rules of their duty.

They were empowered by the Admiralty, as I have already proved, to try the charge he exhibited against Admiral Keppel. They compared it with the Evidence he produced in support of his allegation; and, after the fullest deliberation, they declared that the charge was *malicious and ill founded, it having appeared that the said Admiral, so far from having by misconduct and neglect of duty, on the days alluded to in the charge, lost opportunity of rendering essential service to the State, and thereby tarnished the honour of the British Flag, behaved as became a judicious, brave, and experienced officer; they therefore honourably and unanimously acquit the said Admiral Augustus Keppel of the several articles contained in the charge against him.*

Thus have I laid before my Readers a full and authentic account, from indisputable record, of the Proceedings of the Court-Martial that tried and unanimously acquitted Admiral Keppel. I have stated the charges exhibited before them, the Evidence that came out upon proof, with all the circumstances that can be supposed to have influenced their minds in forming the Sentence they delivered. It remains with the Public to pronounce between the Members of that Court

and Sir H. Palliser and his Advocates among the Ministry, on the justice of their decision.

IV.

I proceed to state the contrast between the proceedings of the two Courts-Martial—the circumstances that preceded the trial of the Vice-Admiral, as opposed to the conduct of his Admiral, previous to his—the constitution of this Second Court—the witnesses—the Prosecutor—the charge—the reasons and supposed facts on which Sir H. Palliser rested his Defence before his Judges—and that *complete* and *honourable* acquittal, which, as the Minister pretends, succeeded a *full* examination into his conduct on the 27th of July, 1778.

As early as the 26th of December, Sir Hugh Palliser made a shew of calling for a trial into his own conduct. His wounded spirit, incapable of a moment's rest even under the pressure of anonymous suspicion, could only be appeased, it would seem, by a public enquiry. The Lords of the Admiralty, among whom he had himself a voice, were desired by him to call on † Admiral Keppel to exhibit his charge, if he had any to make, without loss of time. The witnesses would in a short time be at Portsmouth for the trial of the Admiral. As soon as that should be over, he would be ready

† See his letter to the Secretary of the Admiralty, dated 26th Dec. 1778. in page 4 of the Appendix to Blanchard's Minutes of the Trial.

to vindicate, by these same witnesses, his conduct and behaviour.

On the 11th of February this trial was concluded. The Vice-Admiral, by his own questions, and from the mouths of his own witnesses, had drawn the most complete and authentic proofs of his disobedience and misconduct on the 27th of July. What before was surmise to the Public, now became certainty. The silent censure now spoke aloud; and the anonymous accusation stood avowed and substantiated by a cloud of witnesses, the most reputable and distinguished officers of the British Navy.

The necessity therefore of vindicating his character pressed upon the *nice* feelings of this very *honourable* man with increased importunity. Every delay of an hour was hardening the stains that had been fixed upon him. The witnesses, according to his former wishes, were all assembled at Portsmouth, and nothing was wanting but that an Accuser should declare himself.

But, on a sudden, the Vice-Admiral turned callous to all his former feelings. His impatient spirit settled all at once into the most perfect resignation and tame acquiescence under this accumulated load of guilt and injustice. He fled from Portsmouth even before the sentence was pronounced, and concealed his head in shame and obscurity. Self-expelled from the House of Commons, self-degraded

degraded from all his posts and employments, he sunk from the public indignation, and became a prey to disappointment, shame, and self-accusation.

Sir Hugh Palliser, indeed, gives a different account of his motives. In speaking to Mr. Fox's motion of the first of February, he dignified this resignation of the places of favour he held, and his temporary retirement, by a modest comparison with the conduct of the celebrated Tromp. This great man, whom, with a significant view to himself, the Governor of Greenwich Hospital represented as having afterwards rendered such important services to his country, "*voluntarily resigned his command,*" he said, "to appease the rage of party, and allay the popular frenzy." The fact is not so : Tromp was *stripped of his commission, and dismissed the service*, by an order from the Assembly of the States ; and happy would it have been for this country, if our Ministers had taken example from their wise and prudent conduct on that occasion !

After the battle of the Northforeland, between the Duke of Albemarle and De Ruiter, the Dutch Admiral expressed † *some discontent* at the conduct of Tromp during the action. He complained of *his tardiness in making sail*

† Quelque mécontentment.

towards the Enemy, and of his having remained for such a length of time without joining the Chief Flag. Tromp recriminates. He attempts to justify his own conduct, by accusing his Admiral. The States, deeply affected at this misunderstanding, and anxious to prevent the contents and divisions it threatened to sow among the Navy, deputed some of their own members to investigate the business thoroughly, and to report in consequence. After several days deliberation, the Pensionary De Wit reported from the Committee, " That it was necessary
 " to recal the Lieutenant Admiral Tromp, on
 " account of the disagreement that subsisted
 " between him and the Chief Admiral De
 " Ruiter—That the interest of the State re-
 " quired that one of them should quit the
 " service—That Tromp was not to be compared
 " to Ruiter—That it was expedient to deprive
 " the former of his command, and to chuse
 " another Lieutenant Admiral in his place—
 " That all the States should concur in this re-
 " solution, and observe secrecy—That it was a
 " resolution imposed on them by necessity."

In consequence of this report, entering into its wise reasons, and, moreover, taking into consideration Tromp's letter, libelling his Admiral, the States General resolved to dismiss him the service. He was immediately recalled to the Hague; and, though he offered to make an apology to his Commander in Chief, and publicly

publicly to acknowledge his fault, the Sentence of the Assembly was carried into execution; his commission was taken from him, and he was forbid to quit the Hague, or to carry on the least communication with the Fleet, under penalty of being treated as a REBEL. At the same time, the Counsellor Kievet, Nephew to Tromp, was put under arrest, for having countenanced the printing and publishing of a libel on the Admiral in Chief*.

In this disgrace Tromp continued for seven years, the most brilliant æra of the Dutch History, and in which De Ruiter immortalized his name. At length, the power and influence of the Prince of Orange, to whose family Tromp had always been zealously attached, rose to its greatest height. De Ruiter was applied to by the Prince, to receive him into favour, and consent to his having a command under him. "As to De Ruiter," observes the Historian, "he was of so mild and generous a nature, that he was easily prevailed on to consent to the reconciliation.†" — This great man lived to enjoy the godlike revenge of twice rescuing his accuser from destruction.

If, instead of imitating Tromp in his disgrace, the Accuser of Mr. Keppel had taken him for

* See the French translation of Brandt's Life of Ruiter, pages 383, 384, 385.

† Page 549.

his model in the days of his glory, the 27th of July would have been *a proud day for England*. In the bloody battle off the Coast of Holland, between Prince Rupert and Ruiter, he *shifted his flag* four different times.

But, however the Vice-Admiral may chuse to blazon his retreat, or by whatever arrogant comparisons he may attempt to support it, certain it is, that he found immediate shelter under that power that had stimulated and encouraged him in all his late atrocious proceedings. He was exhorted not to despond, but to meet, with confidence, the trial, which was loudly called for by * the Commons, and by the Nation at large. Two months were carefully and anxiously employed, in making the necessary arrangements. The very day after Admiral Keppel's sentence was known in town, a motion was made in the House of Commons, by a Lord of Admiralty, to soften the rigour of the Articles of War. On the 16th of March it passed into an act, and on † *the 12th of April* the Court assembled.

In the mean time ‡ ships were called in, or sent

* See Almon's Debates of the Commons.

† The trial was first ordered for the 18th of March; but, on application from Sir Hugh Palliser, in a letter to Mr. Stephens, dated the 19th of February, it was deferred till he should himself fix the time, by giving notice that he was ready for it. See a copy of this letter, and the answer of the Admiralty, as printed from the table of the House of Commons, in p. 239 of Almon's Debates. This he calls, in his printed Speech, *his anxiety for an immediate trial*.

‡ Captain Peyton's ship, the *Cumberland*, was compleatly ready for sea, yet the *Monarch*, of the same rate, was preferred for immediate service, though reported to be in a very indifferent condition.

out on cruizes, and officers detained or removed, with such management, as to leave no doubt that all was with a view to this *amicable suit*, as it was well called, which the First Lord of the Admiralty had promised to institute between the Vice-Admiral and the Board.

To say that this can be proved by witnesses is more than will be expected from me. But whoever considers the frequent declarations of the First Lord of the Admiralty, and the late conduct of the rest of his Majesty's Ministers, the honours they have conferred on the Vice-Admiral, to the exclusion of so many older and more deserving officers, and the zeal with which they have stood up for his character, and rung his praises in both Houses of Parliament, and is at the same time informed of what Members this Court-Martial was composed, what the charges were which they were appointed to try, who*and what the nominal Prosecutor was, whose

condition. Captain Duncan was so pressed to get to St. Helen's, that he would have been gone the day before the Court-Martial assembled, had not his people refused weighing the Monarch's anchor before they were paid their wages. When this officer's sitting became unavoidable, the sailing of the Monarch, or any other ship, became unnecessary, and no ship did fail.—Lord Longford was ordered down to St. Helen's, while his Lieutenant, and so essential an officer as his Master, were detained at Portsmouth as witnesses—the Master to swear that he saw the Formidable's lights, which no other man in the Fleet, out of the Formidable, had ever seen.

* Mr. Jackson, Under-Secretary to the Admiralty, and Judge-Advocate.

office

office it was to criminate, what witnesses were summoned, and in what manner they were examined, must strangely misuse his judgment, if he does not see that every step previous to the trial was management and collusion, and that every part of the prosecution was nugatory, and an imposition on the Public.

Officers, who were parties with the Vice-Admiral, his own nephew, and heir-apparent, whom he had procured to be included in his patent of baronetage, sat as Members of the Court. Much pains have, indeed, been taken, and many fine words strung together within the House, to disprove the first assertion. But fine words, void of truth, can never bear the light of facts.

Three of the *Blue Division* sat as Judges upon this trial. If those Officers were not equally guilty with the Vice-Admiral, (indeed, it is no-where stated that they were,) yet, in the evidence of the first Officers of the Navy, they are said to have no more obeyed the signal than the Commander of their Division. † One of that Division *applied to his Admiral to contradict the reports that were abroad reflecting on his conduct*. In this application he was joined by another Captain, (even to the expressing a wish to have an opportunity of clearing his conduct by a Court-Martial,) whose conduct in

† Captain Hood.

P 2

the

the action had been equally reflected on, and who, though not of that Division, yet, it seems, *considered* himself as included in their censure. This Gentleman certainly *thought* himself a party; yet it was contrived that he should sit on the trial †.

* The Officer whom I have already alluded to, declared, on the former trial, that, from the reports that had gone abroad, he did not know but, as one of that Division, he might appear before a Court-Martial as a prisoner, and not as a witness.

In the course of that trial, the Vice-Admiral of the Blue lost no opportunity of connecting the Captains of his Division with his own cause. In many of his general questions, he mentions himself and them together, as well to screen from censure, as to prove merit; and, in the examination of † Captain Jarvis, he puts a question so manifestly calculated to involve them in the same act of disobedience with himself, that this gallant Officer finds it necessary to claim the interposition of the Court, that he may not be led to reflect upon the conduct of men of whom he entertained so high an opinion.

‡ Captain Peyton of the Cumberland. We have already seen that his ship, though in perfect readiness to put to sea, was detained at Portsmouth, and the Monarch ordered out.

* It had been found that he had altered the records of his ship, and gave this reason in excuse.

† P. 158, col. 2.

But

But lest any doubt should remain on the subject, the Vice-Admiral himself took care, in the very introduction to his Defence, that those of his Division, who sat as his Judges, should not forget that they were themselves supposed to be concerned in the sentence they were to pronounce.—After a most pathetic address to their feelings, and when, in the most piteous strain of lamentation, he thought he had sufficiently awakened their compassion and commiseration for his truly deplorable state, he suddenly rouses their attention to their own interest. He tells them, that his original inducement for instituting an enquiry sprung from † *the injurious reflections, cast by some of the friends and dependants of the Admiral, on him, and ON HIS DIVISION, though much the greatest share of the Engagement had fallen to their lot.*

It evidently appears, then, that the Captains of the Blue Division were considered as Parties, as well by themselves as by the Prosecutor. It is equally evident, that in that character they were precluded from sitting as Judges, by the opinion of the Attorney and Solicitor General *; and well might the Vice-Admiral address them, in his De-

† P. 53, Defence.

* "Officers to whom there is a just ground of objection, or who have a just ground of excuse, shall not be included in the number of those of whom the Court is to be composed; consequently, if any officer, entitled by his rank to sit, is either prosecutor, party, or witness, the person next in seniority must supply his place, and the Court so composed will be legally held according to the intent of the act." See Appendix to Admiral Keppel's Trial, p. 170.

fence,

fence, with "a *full assurance* that he should meet
 "with the same protection from them, as each
 "would expect *from his Brother Officer in a like*
 "*situation* *."

The impropriety and indecency of Captain Walters' sitting on a trial that affected the life of his uncle, are so glaring, that the Vice-Admiral's most forward advocates have not attempted to defend him on that ground. They take post on the supposed necessity of the case. They contend, that, as he was unavoidably at Portsmouth at the time, he could not be excused sitting on the Court-Martial.

His being *unavoidably* at Portsmouth is not true in fact. When the order for trying his uncle came to Portsmouth, Captain Walters was absent, by Admiralty leave, from his duty, as Captain of the Princess Amelia. That leave of absence extended beyond the time appointed for holding a Court-Martial; yet a few days before it was to meet he returned, and declined to avail himself of his leave to avoid being summoned, though humanely advised to it by the Commanding Officer of the Port.

The Reader may easily suppose what part he had in framing that clause of the sentence that declares his uncle's conduct to have been, in many respects, *highly exemplary and meritorious*.

* Page 67, Defence.

Thus

Thus we have established the contrast between the *constitution* of the two Courts-Martial—We now come to the Charge and Prosecutor.

The order for the trial is directed to Admiral Darby. In it the Lords of the Admiralty inform him, that it appeared to them, from the Minutes of Admiral Keppel's Trial, that several matters were given in evidence respecting the conduct and behaviour of Vice-Admiral Sir Hugh Palliser, on the 27th and 28th of July, which demand strict examination. They therefore send him the original Minutes of the said trial, and they direct him to assemble a Court-Martial to enquire into the conduct and behaviour of Sir Hugh Palliser on those days, and to try him for the same; but send no specific charge formed from the particulars of that trial.

This order is read to the Court—They immediately proceed to the examination of witnesses; but to what points are those witnesses to be examined? This the Admiralty had left to be amicably settled between the Court, the Witnesses, the Prosecutor, (as * the Judge-Advocate was considered,) and the Prisoner. The first that are called, are Admiral Keppel and Admiral Campbell; but by the very first question they are left to give a narrative to the Court of what they know, or *chuse* to mention, concerning the

* Lord Sandwich's Clerk.

Prisoner's conduct on those two days. They have no specific charge read to them, distinctly arranged and methodised under several heads, to the illucidation of which every question might be framed, and every answer applicable.

When the Prisoner comes to his Defence, he acknowledges there is no such specific charge †. The Prosecutor for the Crown had then closed his examination, and yet he declares himself at a loss how to shape his Defence, or to what heads to direct it. He finds nothing selected from the Minutes of the Trial which the Admiralty had sent down, as the ground of accusation. From the questions of the Prosecutor he can gather no charge. The articles to which he frames his Defence, he tells us, are such as he collects from the ‡ evidence of the witnesses, and the manner in which they deliver that evidence. On this it is to be observed, that, 1st, He selects these articles himself. 2d, He reasons upon them; he applies such part of the evidence to them as he pleases, and rejects the rest. 3d, He produces infinite

† In page 27 of Sir Hugh Palliser's printed Speech, we find the best comment on this *amicable suit*. Suggesting motives to Mr. Keppel for declining to prosecute him, he says, "Knowing that the Admiralty would not grant me a trial without a charge of some kind or other, or that, if one had been granted *without any charge*, it would have been called a *sham trial*."—If Mr. Keppel knew that the Admiralty would not grant a trial without a Charge of some kind or other, the Admiralty, it seems, knew themselves better; and they having granted such a trial, Sir Hugh himself has given it a name, of which none disputes the propriety.

‡ Page 54, Sir Hugh Palliser's Trial.

matter,

matter, as well to exculpate himself, as to criminate his Admiral, which he does not attempt to support by any evidence at all. 4th, He proposes the whole to the Court for their decision.— He is, in short, his own Prosecutor, his own Accuser.

The Judge-Advocate, to whose lot it fell to be properly the Prosecutor, was the most unqualified man upon earth, both from nature and education, to sustain such a post. Unsusceptible, from constitution, of that malice and rancour that boiled over in the breast of the Prosecutor of Admiral Keppel, he could never reconcile his feelings to the horrid task of laying traps for a man's life; of watching every expression, that, by any construction whatever, might afford him matter for questions of crimination; of pushing every point, that either artifice or malice might interpret into neglect, or guilt.

Totally unversed in naval matters, and utterly ignorant of the duties of a Sea-Officer, his conscience must have shuddered at the bare idea of having it put upon him to select from the Minutes of the late Court-Martial * such articles as he might think implied an accusation against Sir Hugh Palliser, for having failed in that duty.— Equally ignorant of the manœuvring of fleets, and

* See the letter directed to him by the Secretary of the Admiralty, dated 26 March, 1779.

of the terms of the profession, he could neither summon the proper witnesses, nor question them when summoned, nor understand the meaning or tendency of the answers, or whether, or in what degree, they were applicable, or foreign, to the business on which he was appointed to examine them.

The Members of the Court-Martial could not take upon themselves the business of the prosecution. Even supposing them to have been otherwise constituted than they were, still theirs would have been the more humane task of leaning towards the Prisoner, whose fame and life depended on their judgment; or, if justice to their country required them to investigate some points more closely, they certainly would not have gone in search of these points, unless they came before them from the questions of the Prosecutor, or unless they required some further explanation than the answer to such questions conveyed.

Sir Hugh Palliser, indeed, tells his Judges, *that every witness claimed the right of attacking him as an accuser* [p. 54]. The thing is in itself absolutely impossible; and the very reverse was the fact. Mr. Keppel, when called upon to tell the Court what he knew against the Vice-Admiral, † *thanked God that he was not an Accuser*. Nay,

he earnestly applied to the Court to excuse him from appearing as a witness; doubtless, because he knew, that, by being a witness, a *conscientious* witness, he must, without being an accuser, furnish ample matter in support of an accusation.

Sir Robert Harland equally disclaimed the character. *§ So far was he from endeavouring to recollect new matter of information to charge or load the Prisoner with, it had been his endeavour to forget what he thought he saw amiss, as far as he could.* Yet, with all these humane and benevolent endeavours, he declares, that he *should be sorry if he knew more than the Court* from the Evidence must have known.

Even Admiral Campbell, against whom the Vice-Admiral thinks he has particular cause to be exasperated, refused to discover any idea he might have formed of his conduct, unless compelled to it by some specific questions†. To such questions he thought his oath obliged him to give a full and satisfactory answer.

If, instead of saying that every witness *claimed the right* of attacking him as an accuser, Sir Hugh Palliser had said, that *every witness* supported an accusation, the expression would have been just. Giving their evidence as their oath required them to give it, it could not have been otherwise. The

answers, even to the friendly questions that were put to them, proved his neglect and disobedience, to the forfeiture of a thousand lives.

From a comparison of the Court, the Charge, and Prosecutors, we proceed to the Witnesses. The witnesses on Admiral Keppel's trial, as we have seen, were the whole Fleet—all who had been witnesses to his conduct. The Vice-Admiral, second in Command, Rear-Admiral Campbell, the oldest and most distinguished Captains in the British Navy, were examined from his own list; yet was not their testimony more exculpatory or honourable to his conduct and character than the testimony of those who had been questioned by his Enemy as witnesses for the Prosecution. With equal confidence and equal security, he adjured them all, by what is held most sacred in religion or society, to bear testimony against him for their Country, if they had seen any instance in which he had behaved unworthy of his station.

To a mind less fixed in its principle, less secure in that consciousness of worth, and knowledge of its duty, which his enemies compelled him to assert, this would have been a fearful and perilous question. As far as it goes to the Prisoner's putting it himself, I believe it stands unparalleled in the records of either service. But it proved as glorious and honourable in the event, as it appeared hazardous in the trial.

What

What joy and exultation beat in every honest breast, (I appeal to the recollection of every man who was present), when the very first witness called by the Prosecutor himself to substantiate this charge of neglect and criminality, gave his answer to that solemn and decisive appeal!

Labouring under the awful impression of the oath he had taken, and visibly agitated with the mixed sensations that arose at the moment in his breast, he solemnly raised his hands to Heaven, fixed his eyes on his Admiral, and, with a voice that spoke his feelings, cried out—" * *No, as God is my Judge.*"—All reserve, all decorum due to the place, here gave way in the audience, and the sense of the assembled Navy was fully discovered by an involuntary, universal burst of applause.

The answer of all the rest was equally decisive and honourable. For though there were a few, three or four at the most, who pleaded I know not what idle distinctions, reprobated by the Court, between questions of *opinion* and questions of *fact*, who reversed the meaning of the poet, and might merely be said to *hint* his praise and *hesitate* applause, yet this very reluctance bore the most ample testimony to the Admiral's merit. The silence of enmity is positive praise. Even the implied approbation that is wrung from an anxious wish to criminate, by the clamours

* Captain Marshall.

of

of conscience, must be infinitely more satisfactory than the warmest and most unreserved applause from a friend. Yet theirs was more than *implied*—They concurred in the general praise due to Admiral Keppel's great and long-acknowledged merit, and refused to instance any exception that had ever come within their own observation.

But who were the witnesses summoned by the Vice-Admiral? From what rank or character in the service were they called? His own Captain, his own Lieutenants, his own Midshipmen, the creatures of his interest, and the dependents on his power, stand in the front. The Gunner, the Gunner's Mate, the Captain's Clerk, and two common Seamen of the Formidable, closed his list. These were all he could collect from the whole of the great Fleet who were Eye-witnesses to the action.

His friends will not wish me to mention the witnesses produced by the Crown—Three Admirals and the few Captains out of all the officers who had been present on the 27th and 28th of July, only one of whom was of his own Division—If they are to be brought forward, it must be to his condemnation. Their * depositions

* See Admiral Keppel's Evidence in the printed Minutes of Sir H. Palliser's Trial, particularly page 9, col. 2;—the Evidence of Sir Robert Harland, Admiral Campbell, Captains Walsingham, Leveson Gower, M^r Bride, Sir Charles Douglas, Laforey, Faulkner, Prescott, Windsor, Berkeley; all confirming the several articles of crimination.

prove

prove his positive disobedience and criminal neglect in the most material occurrences beyond a hope of exculpation ; and as to their opinion of his general conduct on those days, that is passed over in the silence of death. No tongue ventured to utter it—no ear wished to hear it.

Upon the whole, then, we have here a Court-Martial composed of members whom the Vice-Admiral had always represented as parties, reinforced by the nephew and heir-apparent of the Prisoner ; without a charge on which to judge, without a Prosecutor to criminate, with witnesses † garbled, and summoned, or left out, as best suited the interest of the Prisoner ; and the imperfect and often contradictory Evidence of a few Officers and common men of the Vice-Admiral's own ship, thrown into the scale against the depositions of Three Admirals and Seven Captains of the British Fleet ‡.

† Sir John Hamilton and Captain Keith Stewart were summoned as witnesses in favour of the Prisoner, though never called on to give Evidence. It is therefore a fair conclusion, that, by summoning them, he only meant to preclude them from sitting as Judges on the Court-Martial, to which their seniority called them, and as they otherwise might have done in exclusion of his Nephew.

‡ What weight ought to be laid on Captain Bazeley's testimony will appear from comparing part of his Evidence on Admiral Keppel's trial, with his Evidence to the same points on the trial of his own Admiral. On the first, *he could not recollect what sail the Victory carried* ; on the second, *he perfectly recollected and minutely reported every sail*. On Mr. Keppel's trial, he positively swore that the *Formidable did not carry her distinguishing lights* on the night of the 27th ; on Sir Hugh Ralister's, he deposed that they were burning on board of her the whole night.

The next progressive step would be to compare the Charge and the Evidence as on the former trial, and by that process lay before the Public the grounds of the sentence. But here we are left without a clue to guide us. We have no specific charge to state—we know not what part of the Evidence the Court considered as coming properly before them, or to what points they could apply it.—From any thing that appears on their Minutes, we cannot, in any strict legal sense, look upon their determination as a *sentence pronounced judicially*. The conduct of the Prisoner on passing the British line was never impeached; they gladly seize on this particular, and give it praise. His neglect in not shifting his Flag, or acquainting his Admiral of his supposed inability to obey the signals, he had brought forward himself; he had acknowledged

night. On the first trial, he fixed the time of the Formidable's being in danger to be cut off *before the action*, positively saying that it *was not after they had passed* the French line; on the second, he declared, as positively, that this danger was *after they had passed* the French line, and when the Enemy's ships pointed towards them. On Mr. Keppel's trial, he declared that the Formidable was in no time of the day not *manageable*; on Sir Hugh Palliser's, he affirmed that she was a *perfect wreck*, except her masts and yards not coming over-board. On the one, he did not know whether the Formidable took her proper station in the line before day-light the next morning; on the second, he *knew she did* at two o'clock. Compare pages 55, 59, and 62, of the first Trial, with pages 46, 47, 50, and 69, of the second.

The Evidence of the other Officers of the Formidable is so vague and uncertain, that no credit can be given to it. All is proved to have been confusion and disorder on board her. There does not appear to have been an eye in the whole ship, directed either to the motions of the Victory, or any other ship in the Fleet.

it--“ *he never designed to do either.*” This had also been proved to them upon Evidence at their bar; they were therefore obliged to take cognizance of it, and they censure him for the omission without any further punishment. In other words, they find him guilty of the only specific charge that came legally before them, and acquit him of every thing else---acquit him as far as such an acquittal can operate, where there was nothing else that they could consider themselves called upon to judge. Even had they been otherwise constituted than they were, as I have already observed, it would have been an envious task in men sitting on judgment for life, to have gone in search of criminating matter beyond what was produced by the accusing party. It would be uniting what, without the violation of all justice, never yet met in the same person, the character of Prosecutor and Judge.

This is the plea which I fairly and candidly thought myself obliged to offer for the Court-Martial. It presented itself to me from a full consideration of the whole business as it came before them. God forbid that I should attempt to libel their conduct, or accuse them of injustice, unheard or without proof. However suspiciously that Court was constituted, there were certainly honourable and brave Officers amongst them, incapable of doing violence to strict justice as Judges, or to their own feelings as Men.

Leaving, therefore, the Sentence of the Court-Martial out of the question, as far as it is uncon-

R

nected

ned with the consequences deduced from it by the Advocates of the Vice-Admiral, I shall have recourse to the next best expedient of giving just information to the Public, and enabling them to judge of the nature of the *almost unexampled* strictness and rigour of examination on which Sir Hugh Palliser, and his Advocate the Minister, tell us the Vice-Admiral was so honourably acquitted. I shall take the Prisoner's own Defence, as read by the Judge-Advocate, and consider whether it refutes the Charges that can be collected against him from the Evidence on Admiral Keppel's Court-Martial. I profess myself his Prosecutor. Thus openly in the face of day I arraign him at the bar of the People of England, and call upon him to put in his answer to my accusations. He cannot reproach me with unfairness; I shall only follow where he leads me, and observe upon his Defence, page by page.

There are some general observations that must meet the attention of every person who reads this curious composition from the very first sentence. It is an accusation of others, more than a vindication of himself. It offers invective for argument, and calumny for reason. After declaring that the Vice-Admiral was the first who called for a trial on his Commander in Chief, from motives of *self-vindication*, it insinuates that the second trial, which the Admiralty had ordered in consequence of the former, was an *unprovoked attack* from his most inveterate and unrelenting enemies; and accuses every officer who was
forced

forced to give his Evidence, as actuated by *malice and ill-will*. Its object is to misrepresent, to confound, to mislead. It deals in *supposed* facts, either totally unsupported by Evidence, or absolutely contrary to the Evidence that had been received. Conjectures, and surmises, and probabilities, is all it attempts to oppose to depositions confirmed by oath.

P A G E 53.

The Vice-Admiral's first appeal is to the pity and commiseration of his Judges; and a most melancholy tale he unfolds indeed! There is something grating to a generous mind in taking from an Officer the merit of past services. I should, therefore, be happy to give full credit to the Vice-Admiral for all the praise he claims for the hardships, the dangers, and the distressful incidents he has shared *in common with the rest of his profession*. But there is a point that comes under this head, on which he and his friends have been guilty of such wilful misrepresentation, that I cannot pass it over in silence. They have forced me to mention it, because they have made it the principal plea for restoring him to employment—that fatal measure, that has given such a blow to the discipline of the Navy of England. We all remember the shouts and acclamations that resounded from the Treasury-Bench, when † the

† Governor Johnstone, in his Speech on the 1st of February.

Herald of his praises, with all the over-strained zeal of a new convert, pointed out the Vice-Admiral *hobbling up the House, crippled and lamed in fighting for his Country*. This proselyte panegyrist *knew* that the wound was not received *in fighting* for his Country. It was, indeed, received in the course of service, but from such an accident as might have recommended the greatest Coward in the Fleet to the notice of the House. I do not mean this invidiously, but merely to shew the Public the unworthy artifices that are practised to obtrude this obnoxious man upon the service.

The same motives I must assign for my observations on that disinterestedness, of which he boasts, in accepting employment. What title he had to that ample income from offices, in preference to his superior Officers, the world is at a loss to judge. Neither Admiral Keppel, nor Sir Robert Harland, second in command, possessed a single office of honour or profit, except what was annexed to their temporary commands. The flag of the Vice-Admiral was certainly an additional income to his other employments, and I have never heard that he resigned any one of them on this fresh appointment.

I shall dismiss the whole of this introduction for the present, with this one remark. Abuse upon the witnesses, encomiums upon his own merit and character, a moving appeal to his present supposed sufferings, and an affected re-
ference

ference to past services, did not certainly argue any consciousness of his own merit, or of the justice of his cause. He certainly did not take the example from the man he had prosecuted. *He* had too powerful support from within, to think he needed such degrading, meretricious arts. *He* had too manly a contempt for the malicious efforts of his enemy, to condescend to notice him by abuse or recrimination.

PAGE 54.

He comments upon the signal on the morning of the 27th, for seven ships of his Division to chace to windward. He reflects on Admiral Campbell, for having made this signal, so important in its consequences, without orders from the Commander in Chief.

It had been proved by Evidence that the fact was not so. The signal was made in consequence of the last orders received from the Admiral on the preceding evening *. These orders were *to keep the ships under his command, as much compact together, and as much to windward as possible.* In obedience to these, Admiral Campbell made the signal for such ships as he saw too far to leeward, to close up with the Fleet. The orders were *positive*; the *manner of executing them* was left to the judgment of Ad-

* See Admiral Campbell's Evidence on Sir Hugh Palliser's trial,

Admiral Campbell, and to be enforced whenever the inconveniency they were meant to guard against, should, in his opinion, require it. But what stamps these orders with unobjectionable authority, is the Evidence of Admiral Keppel, which the Prisoner thought proper to pass by in silence†. He approved those orders, and the manner of putting them into execution, as soon as Admiral Campbell had informed him that the signal had been made.

He next proceeds to accuse Admiral Campbell, in being inaccurate in recollecting the position of the Formidable, that made the signal necessary.—To prove this, he quotes the Journal of the Victory. This places him on the Lee-Bow, whereas Admiral Campbell placed him on her Lee-Beam.

But the Victory's Journal can never be produced in contradiction to solemn and positive evidence. It had never undergone either correction or examination in the manner practised by Sir H. Palliser with his Master, and Captain Hood with the Robuste's Log. The Evidence of the Victory's Officers, confirmed, in the most pointed words, by Captain Jarvis and Sir Richard Bickerton, agreed with Admiral Campbell, and proved the necessity of this signal, however affronting it was to the Vice-Admiral. It cer-

† See Admiral Keppel's Evidence.

tainly drew the attention of the Fleet to his neglect in the management of his Division; and this censure, enforced by the contrary example set by Sir Robert Harland, though salutary in its effects to the general service, must have been extremely galling to the Vice-Admiral of the Blue. Sir Robert Harland entered at once into the Admiral's intentions, and, anxious to second them, applied the most unremitting attention to keep his Division well to windward, never failing to make a signal for that purpose, when he saw it necessary, *without waiting for orders*.

To be assured of the support of his own Officers, the Vice-Admiral of the Blue takes care, in the next page, [p. 53.] to insinuate to them, that, if the Formidable was in the position the Evidence placed her, it could not have happened without their being wanting in exertions to second his endeavours, and obey his orders. He called them to that point; and their Evidence was such as he had reason to expect. But it will require very different proof than testimony so obtained before any Officer will allow him the praise of unremitting attention he claims to himself, while such venerable authority has declared upon oath, that he was much to leeward of his station, and that he continued, † *with his mainsail up*, to keep his Di-

† *Captain Jarvis*.—The Vice-Admiral called Evidence to prove that the Formidable was a worse sailing ship than the Victory. His negligence was, therefore, the greater, in carrying such disproportionate canvas as made him fall so considerably to leeward.

vision

vision under an easy sail, and dropping still further to leeward ; and this at a time when the Enemy's fleet was in sight to windward, and his Admiral, as he himself has acknowledged in his amended Log-Book, was exerting every effort to bring them to action.

PAGE 55.

I will not repeat the Evidence that might have been called to falsify his assertion *of want of support* during the action. They are warm in the recollection of the reader, as produced on the Trial of Admiral Keppel. How the Court-Martial that tried the Vice-Admiral could come at the fact, or how they could form any judgment upon it, I should be glad to be informed. The Vice-Admiral did not call a single Captain of his Division to prove it. Captain Laforey had indeed been produced by the Crown ; but to the single question proposed to him on the subject, he answered, that he might be about three cables length from the Formidable when she came out of action. The Vice-Admiral never attempted to examine him to the point.

The nauseous repetition of his own praises, which we meet with in this page, and the encomiums with which he is for ever blazoning his gallant conduct, he may ring to as many changes as the ears of his dependents, and of those who find him necessary for their own purposes, may bear. Admiral Keppel never
complained

complained of his manner of going along the French line. On the contrary, he at all times gave it, and gave it cheerfully, at least, its full commendation. But when he presumes to arrogate this merit to himself, in exclusion of others, the Jay must be stripped of its borrowed plumes. In his insolent claim to such superiority, he was repeatedly checked, during the trial of Mr. Keppel, by many of the Captains of the Fleet:—brave and gallant men as any the Navy could ever boast, and whose Officers and Ships Companies had as great a share in the action, and behaved with at least as much coolness and gallantry as the Formidable, though they were never heard to boast of it. If their merit in this particular was not so much noticed or spoken of, it was because there was no reason for calling it in question from any part of their subsequent conduct. The Victory in particular might, with great reason, contend, that she had more of the battle from *fresh ships* than the Formidable. She began the engagement with the same ship the Formidable began with, and received and returned the fire of all the others before her. Deduct from the list of the Formidable the effects of the blast from the cartridge, and the Victory's killed and wounded exceed it in number. Mast for mast, sail for sail, and rigging for rigging, she was at least equally damaged. But the contention would be too insignificant for a Commander in Chief to descend to.

The **fair observations* on the conduct of the Vice-Admiral, when passing the French line, I shall give in the words of Sir Robert Harland. "I think," says this experienced witness, "there was merit in carrying on the fire of the Formidable; but it was equal merit with every ship that went before, and that followed the Formidable, in passing the French line. More was not necessary than that; for it established, in my opinion, at that time, the good behaviour, in that instance, of every individual that was concerned in command. But the Court, I presume, has observed, in pursuing the French in the way we did that day, was a bold and necessary, and allowable stroke in war, where nothing but risk, as it appeared, could stop the French fleet from getting off.—*The great and decisive strokes of the day were to follow by closing with the Enemy, and fighting it out.*"

This last observation, fully warranted by the motions and declarations of the Commander in Chief, brings us to the point that makes this boast of the gallant conduct of the Vice-Admiral, during the action, of any consequence in the general question.—Here lies the whole stress:—the great and decisive strokes of the day were not followed up—we did not close with the Enemy—we did not fight it out. A cloud of Witnesses, with the Commander in

* P. 34, Sir Hugh Palliser's Trial.

Chief at their head, had deposed upon oath, that the Vice-Admiral of the Blue had been the cause of this failure. He continued the whole afternoon to disobey the signals and messages that called him down into his station. The ships of his Division regulated themselves by his conduct. They thought themselves obliged to stay with their flag. During this inaction night came on, and the French Fleet seized the opportunity of escaping to Brest.

In answer to all this, the Vice-Admiral of the Blue tells us, "My ship was too much disabled. The extraordinary damages she received in the action rendered her incapable of resuming her station in the line." This plea has been pretty fully considered in stating the Evidence on Mr. Keppel's trial. But, as the Vice-Admiral lays the whole stress of his Defence on his being able to prove this point, it will be necessary to resume it here. In this page he barely mentions that part of his Defence. Pages 59 and 60, he enters into the particulars. These were his superior damages in sails and rigging; his inability to bend his fore-top-sail; and the dangerous state of the Formidable's foremast, which was the great impediment to her carrying sail, mentioned particularly in his resumed Defence, page 98.

It happens unfortunately for the Vice-Admiral, that he has not been able to prove any one of these assertions. On the contrary, it

appeared incontestably, that the Formidable was damaged little more, even in sails and rigging, than ships in general, and not more than the Victory. The comparison can be made to a certainty, from a view of the returns made of both ships, immediately after the action. As the point is so essential, I have caused them to be printed from authentic copies *.

Yet,

* *A Copy of DAMAGES sustained on Board the VICTORY on the 27th of July, 1778, and given in the 28th.*

The bowsprit shot through near the step.

The main topfail yard ditto on the starboard quarter.

The main mast shot through eighteen feet from the quarter deck.

The mizen mast shot through eight feet above the poop deck.

One fore chain plate shot away.

One main ditto ditto.

Two lower deck ports shot thro'.

All the sails that were bent much cut.

The main topfail unbent and replaced with a new one.

The gammonings of the bowsprit shot away

The collar of the fore stay ditto.

The fore topmast stay ditto.

The fore topgallant stay ditto.

The fore runners and tackles do.

Six fore shrouds ditto.

The starboard fore tack and sheet ditto

Starboard fore bow line ditto.

The four geer blocks on the yard ditto

One mast head block ditto.

The fore geers shot away.

The fore topfail sheets ditto.

The fore topfail clew lines ditto.

The

FORMIDABLE, at Sea, the 29th of July, 1778. Copy of Captain Bazeley's Account of DAMAGES sustained in the Action on the 27th of July, 1778, and sent to the Victory the 29th.

Two large shot in the bowsprit
One large and several grape shot in the bowsprit.

The fore yard slightly wounded.
Main topmast badly ditto.

The main topfail yard wounded slightly.

The mizen mast badly wounded.

The mizen yard slightly wounded.

Three fore chain plates shot away.

Three main ones ditto.

One mizen ditto ditto.

All the sails that were bent cut to pieces.

The fore spring stay cut.

Nine fore shrouds ditto.

All the fore topmast shrouds and back stays except two ditto.

Five fore topgallant shrouds and back stays ditto.

Eight main shrouds ditto.

The main spring stay ditto.

The main topmast stay and spring stay ditto.

Fore main topmast shrouds and back stays ditto.

One main geer and top chain ditto.

Three mizen shrouds ditto.

Two ditto topmast shrouds ditto.

The best bower cable ditto.

And

Yet, notwithstanding that the damages of both ships were thus nearly equal, we find that the Victory had all hers repaired at a little after three o'clock, so as to be fit for action. While the Vice Admiral of the Blue pretends, that his ship was not in a condition, even to make sail for her station, till eight o'clock in the evening, and not in proper repair before ten. The Victory unbent her main-topfail, and bent a new one, in little more than half an

VICTORY'S.

One fore topfail brace and pendant ditto.
 The jib guyes and falls ditto
 The jib sheets ditto.
 Two fore topgallant back stays do,
 One fore topmast ditto ditto.
 One fore topmast shroud ditto
 The main topmast stay ditto.
 The main preventer's stay and one main topfail bow line ditto.
 Seven main shrouds ditto.
 Five main topmast back stays do.
 Four main top gallant ditto
 The main topfail clew-lines, bunt lines, and leach lines ditto.
 The main truss pendant ditto and falls
 The main runners and tackles do.
 The main bunt lines and leach lines ditto.
 One main clew garnet do.
 Main stayfail halliards ditto
 One main brace pendant ditto.
 Four mizen shrouds ditto
 Two mizen topmast back stays do.
 Mizen derrick three brails ditto
 Mizen topfail lifts and braces do.
 One cross jack brace ditto
 Several shot in the hull.
 Twelve men killed, and twenty four wounded.

FORMIDABLE'S.

And the greatest part of the running rigging ditto.
 Fourteen men killed, and forty nine wounded.

hour

hour; the Formidable's fore-top-sail continued unbent for four hours and more.

In accounting for this great difference of time in repairing damages proved to have been equal, Captain Bazeley asserts, that he judged it too dangerous to attempt to send men to the fore-top for that purpose till the foremast and fore-top-mast were secured. If he had attempted it, he *should have expected that the foremast would have come over the side, from the rotten state it was proved to be in on inspecting its wounds.* To support this evidence, he produces a paper of damages, dated July 27th, 1778, and signed John Bickerson, carpenter. This paper says, the mast was discovered *to be perfect touchwood*, and in danger of going overboard, *having no stays, and but one shroud to windward.* That he did risk to send men to the fore-top is proved by a fact universally admitted. He unbent his old fore-top-sail, and triced up the heels of the top-gallant studding-sail booms. Bickerson's supposed evidence, if true, would certainly be conclusive. But there is one *small* objection to it; and that is, that he contradicts every word of it himself upon his oath. He positively affirms, that he knew nothing of the rottenness of the foremast on the 27th of July. He secured the chain-plates of the fore shrouds directly after the action; he reefed the main-topmast, and cut the heel off the next morning; he set about fishing the mizen-mast with an anchor stock the night of the 27th, and

and compleated it. He is exactly minute in this detail, but *knows of no other repairs whatever.**

But the Vice-Admiral is not to be put down even by so conclusive a refutation to his assertions. He has an answer ready prepared to wipe away the impresson this unlucky evidence might have made on the minds of his Judges.—“ The “ carpenter spoke *confusedly*, when he mentioned “ the time when first he knew of this rottenness; “ but the fact was certain.” Page 93.

It appears upon the printed Minutes, that the carpenter was far from being *confused*. The question was put to him twice, whether he had fished the foremast on the evening of the 27th, and twice he answered, that he had not; and twice he added, that the first he heard of the foremast's being rotten, was in Plymouth Sound.

To corroborate the carpenter's evidence, Admiral Keppel had two returns sent him from the Formidable, which, for want of a proper Prosecutor, were not produced in this Court. The first is of the 28th of July, signed by Sir Hugh Palliser. This does not mention a word of the rottenness of the mast, nor of any wound in it, though it mentions the mizen-mast being fished, and other damages. The second is of the 29th. This mentions the damages specifically—“ Mizen- “ mast badly wounded, is well fished; main-

* See his evidence, p. 71, Sir Hugh Palliser's Trial.

" topmast badly wounded, is reefed ; one large
 " shot, and several grape shot lodged in the
 " foremast ;" but *no mention of the rottenness, nor
 any other remark whatever on that mast* *.

The fact, indeed, must meet a full contradiction from every Officer that presumes to be a good seaman. What ! the foremast found rotten, and in danger, and no one attempt made to fish it ! The mizen-mast, we find, was fished upon this occasion. But every seaman knows that the foremast and bowsprit are the first objects in a ship for security ; and that the mizen is a very trifling concern, in comparison with the other masts. Besides, Captain Bazeley's account says, the mast had *no stays left, and but one shroud to windward* ; yet he wore twice, and made sail upon different tacks. In such circumstances, and with the sea they then had, the foremast, though completely new, must have gone overboard.

If I maybe supposed to have dwelt too minutely on this subject, it must be recollected

* By the first report given to the Commander in Chief it does not appear that the Formidable suffered more in the action than most other ships of the Center or Rear Division. The Vice-Admiral could not have been much more than half an hour later out of action than the ships of the Center ; consequently, he could not want much more than that half-hour longer for his repairs. As to the testimony of his officers, it cannot go far, when we consider that they were actually parties in the refitting, and that it would be disgraceful to them, if it should appear that there had been any neglect in so essential a concern.

that

that the Vice-Admiral has declared it to be one of the most important points whereon he rests his Defence. This was the real difficulty that rendered it so long impossible for him to resume his station, whatever signal, or whatever message might have called him down. How far he has reason to be content with the result of the enquiry, the Public is left to determine.

In the last paragraph of page 55, we find him, as usual, pronouncing his own panegyric, and passing censure on the conduct of his Commander in Chief.

On coming out of the action, he tells us, he saw the Admiral, *with the ships of his own Division about him, and some of the Blue Division, which had joined him in the engagement. He was standing towards the Enemy, and had the signal for battle still flying.*

Where are the advocates of this innocent and much-injured Officer? Those who wish to hurl the censures of the Legislature at every man who presumes to accuse him of falsehood, or to ascribe malice to his motives; how will they palliate this shameful attempt to confound and mislead? Would it not be supposed, from his words, thus artfully arranged, that the Admiral was advancing towards the Enemy, supported by all the ships of his own Division, and all those of the Blue that had closed with the Center in the

T

action?

action? But the reader well knows that it could be proved indisputably (for it was proved on the Minutes sent down to the Court) that all the time the Victory stood towards the French Fleet there were only four ships *near her on the same tack with her*, and that not one of these belonged to the Blue Division. Did the Vice-Admiral call a single witness to disprove that evidence, or to give even a colour to this malicious insinuation? Did the Prosecutor? Did the Court-Martial?—Not One. Yet this is the Minister's full examination! This is Sir Hugh Palliser's *unexampled strictness*! Does the Vice-Admiral forget, that, in a few pages, it will be essential to the defence he sets up, to prove that those very ships of his Division were totally incapable of supporting the Admiral at that time? and that he himself concluded, that his Admiral could not possibly mean to *renew* the action, *disabled, shattered, unfitted* as they were, and incompletely formed as the Center was? Does he forget that he will equally have reason to repent the boast he makes immediately after of the alacrity and joy with which he wore, in the conviction that the Admiral was advancing to renew the engagement immediately?

For where will it lead him?—AT TWO O'CLOCK, he *does not hesitate a moment to take the lead in what appeared to him so glorious a design*. He doubles upon the Enemy, he stands after them, *without suffering his men to stir from their*

their quarters *, *without beginning to resist*—He continues a considerable time on the same tack *without refitting*; he again wears *without refitting*; makes sail close upon a wind *without refitting*.—All this *at two* —But AT FIVE his ship is *a complete wreck, unmanageable in a line*, incapable of going down before the wind to resume her station! Eight o'clock in the evening comes, and she cannot attempt to make sail; while every Captain in the Fleet saw, with indignation, that, far from *leading*, he would not even *follow*, to the perfect completion of that glorious design, at the bare *idea* of which he *so much rejoiced*.

PAGE 56.

He says that the *Victory shortened sail*. This *malicious* interpretation he endeavoured, on the trial of Admiral Keppel, to fix on the bending of the *Victory's* main topsail. It was proved to have been a partial repair, and of no detriment to the moment, yet he repeats the accusation here; but he does not call a single witness, nor does the Court, in their *strict and full examination*, ask a single question on the subject.

The same reference to the first trial will refute his assertion with regard to the impossibility of

* “The time was still further protracted by our wearing immediately to stand towards the Enemy again, and continuing to keep the men at quarters in expectation of an immediate renewal of the action; so that we did not begin to resist till we came again to the starboard tack, and joined the Admiral.” Defence, p. 60.

his seeing the signal for the line of battle till he had passed the Victory, as he fled from the three ships that pointed towards him. He acknowledged on that trial, that he saw it as soon as he had passed her, and asserted that he repeated it; yet not a Captain in the fleet ever saw it on board the Formidable †.

PAGE 57.

But here, it seems, he has been casually led to discover a *remarkable* piece of Evidence that establishes this fact to *demonstration*. A member of the Court (I wish the Minutes could inform the Public who that member was) had asked whether a gun had not been fired, as it ought to be, when this signal was repeated. This led him to examine the Gunner's Expence-book, where, *to his great satisfaction*, he finds an express charge of the very identical gun fired on the occasion, *the very last that was fired from his ship on the day of action*. This would be a very *satisfactory* discovery indeed, if it proved no more than the Vice-Admiral would wish it to prove. But, unfortunately for him, it gives the direct lye to the assertion he had so obstinately maintained, that the signal for the line was never seen by the Formidable while she was on the larboard tack.

† Captain Digby's taking his station a-stern of the Formidable, on a belief that the signal for the line was hauled down on board the Victory, is a direct proof that it was not then flying on board the Formidable. That it continued flying on board the Victory till after dark, was proved by uncontrovertible evidence.

It proves that she did see this signal while on that tack, and that she repeated this signal. It consequently convicts the Vice-Admiral of an open act of disobedience, aggravated by every circumstance of guilt and ignominy, for which nothing but his life could atone. The Gunner's mate, who fired the gun, deposes, that he fired it *presently after the engagement, on the larboard side, to WINDWARD.* The Expence-book makes no mention of any other gun fired for a general signal. It was the very last fired from the ship on the day of action. The Vice-Admiral's assertion, that he did not see or repeat it till after he had passed the Victory on the other tack, is therefore false. He saw and repeated it on the larboard tack, while his Admiral was standing towards the Enemy, *according to his own account*, with the Center and Rear Division, to renew the attack. Was not his station in consequence a-head of his Admiral? Yet he fled from that station, and never more resumed it during the course of the day. For my part, (and I am not superstitious,) I can visibly trace the finger of Providence in this remarkable business. Sir Hugh Palliser, as a *seaman*, never could have so rashly seized this shadow of Defence, evidently suggested to him by his Counsel, and that must lead him so palpably into his own condemnation, if he had not been struck with infatuation from Heaven, in punishment for the most crying of all offences—the thirsting after the blood of the innocent.

But

But here, as in every other difficulty he starts in his own way, we find the Vice-Admiral armed at all points. Page 56, he admits he had seen the signal for the line on that tack, still *his wearing and approaching the Victory*, by which he disobeyed that signal, *would have been justifiable; because, says he, as I have already explained, the signal for battle was hauled down, and the Victory, with the Vice-Admiral of the Red, with his ships, had shortened sail, and at the same time I saw the French Fleet wearing to come on the starboard tack, and three of their ships pointing towards me.* He acknowledges, page 59, that the signal for the line is *the most commanding of all signals*,—yet he contends here, that deserting the post to which he was *tied down* by that signal, was *justifiable*, because another signal, which was then useless, was hauled down *; because he saw, what it was proved he never had seen, the Victory shortening sail; and because he fled from a supposed danger, to which at the same moment he left his Admiral exposed!

His not resuming his station, *even after he*

* The signal for battle the Fleet is to look for, and not to judge, because it is not flying, that the Admiral has given up all intentions to battle. He is the judge, and to take his own time; and nothing requires greater skill or nicer discernment than to seize the precise moment when to make it with effect. Sir Hugh Palliser is the first sea-officer, and I hope he is the last, who ever maintained that it should be kept flying when the Enemy is at too great a distance, and the Fleet not in a condition to engage together, or with any effect.

con-

confesses he saw that signal, and repeated it, he contends in another place, was equally justifiable. But his reason is in itself more curious, and, in the doctrine it inculcates, most dangerous and fatal indeed—He thought his Admiral did not mean to renew the attack. The most obligatory of all signals, and that which supersedes all others, was flying on board the Admiral, and, instead of obeying it, he stands still, and reasons upon the intentions of his Commander in Chief; and though he tells him in the plainest and most forcible terms that such language could speak, that he does not give up all idea of re-engaging the Enemy, he sticks to his reasonings, and determines that he has given up the idea, and that he does not design to re-engage.

But beat him from this post, and he flies to another—"His ship was not in a condition to *keep her station in the Line.*" Did he inform his Admiral of that circumstance? Did he look about him; and, observing the ships of his Division regulating themselves by his motions, and not bearing down into their stations, because they waited for his Flag, did he take any steps to shift that *Flag* from his disabled ship? No; he *judged* that his Admiral did not mean to engage, and he owns none of these measures ever struck him as necessary.

Does he not acknowledge, and did not his Captain depose, that the Formidable was at all times able to *bear down into her station.* This was

was what the signal from his Admiral commanded him to do—whether, when she had got there, she could maintain her post between two ships or not, or keep pace with the Admiral, should at that moment have been no subject of deliberation to him. There may be circumstances where the sacrifice of a ship may become necessary.—What I mean is, that, if a subordinate officer is to reason on every signal and order, previous to his obeying them, and to determine within himself, whether he is to obey them or not, there is an end of all discipline at once. A Commander in Chief has no Command—and well might * one of the ablest sea-officers this country had ever produced, refuse to retain a Command in our Fleets, when a Lord of Admiralty, a Flag-Officer, advanced such doctrines in the face of a Court-Martial to justify his disobedience, and when that Court-Martial seemed, by the sentence they pronounced, to give these doctrines the sanction of their acquiescence.

PAGE 59.

He says he hauled to windward, out of the way of the Red Division † that were forming in the Rear; and that he directed his attention to

* Sir Robert Harland.

† I should be glad, if he or his Captain, who made the same assertion, would tell the Public, how they knew that the Red Division was to be formed in the Rear? They could not have known it, nor could this have been the reason of their keeping so much to windward of their station in the line.

keep the *command* of the wind, with a view to resume his station when he should get to the length of it.

In another place, where it answered another purpose, he denies, in contradiction to Admiral Keppel, and to the record of his own *approved* Log, that he *bugged his wind*. Here, in order to prove that he steered the course proper for *getting up* to his station, he did *bug his wind*; he directed all his attention to *keep the command* of it.

That he was well able to haul up, and go as close upon a wind as he pleased, I readily admit.—It was proved upon him when he denied it.—That he was well *up to the length* of his station, the reader has already seen in the Evidence on Admiral Keppel's Court-Martial. By that it was proved, that he was absolutely in the wind's eye of his station, and well forward on the Victory's weather-quarter; which was the length of nine ships, observing their proper intervals, a-head of his post in the line. P. 60, indeed, he says, this Evidence is disproved by some of his own officers; and, to shew that these are more worthy of credit than Admiral Keppel, Admiral Campbell, Captain Faulknor, Captain Leveson Gower, and the Lieutenants of the Victory, he says, it was “ the business of his officers to watch the motions of the Victory, but that those from whom *they differ so widely* had no particular reason to be nicely attentive to the situation of the two ships.”

U

He

He plumes † himself, in another place, for having disposed of all his Officers in a very different manner. Anxious not to lose a moment in *taking his station*, and *seizing the glorious opportunity* of discharging his duty, he ordered all his Officers to attend only to the speedy repair of the damages his ship had sustained. ‡ The Captain he sent to the Forecastle; the Lieutenant and Midshipmen were disposed where most wanted; he himself remained on the quarter-deck, busily employed in the same important work. So obedient were they to these orders, that every thing unconnected with them was never in their observation. Did Captain Bazeley see the Fox when she came along-side the Formidable? No—he never took notice of her till his attention was called by the cheering, as he stood on the Forecastle *employed in repairs*. Did he know, from his observation, what course the Formidable must have steered to have got into her station at five o'clock? No—he had no recollection at that period.—Did he observe the Ocean, the ship immediately a-stern of his own? No.—Did he see any ships bear down into the Admiral's wake in consequence of the Pendants flying on board his own ship? No—his attention was engaged about getting the fore topsail set*. Did the Lieutenant *who*

† Page 47, Sir Hugh Palliser's Trial.

‡ See page 70, Captain Bazeley's Evidence, Sir Hugh Palliser's Trial.

* In the former trial he could not recollect what sail the *Victory* carried—he had not observed.

was stationed on the poop see the signal for the line of battle repeated during the afternoon? No— he was employed on the repairs of the mizen mast.— Was there an Officer in the Formidable who could give an account of any one circumstance that happened, either in the Fleet or on board their own ship, after the action was over? No, not distinctly— they cannot charge their memory— they were too much employed.

But, supposing their attention to have been exclusively directed to the motions of the Victory, will the Vice-Admiral presume to maintain, that Admiral Keppel, whose immediate prospect of securing his country's safety, adding new lustre to the British flag, and gaining immortal honour to himself, was every instant vanishing from his sight, through the disobedience of the Vice-Admiral, *had no particular interest to be nicely attentive to the situation of his ship?* Had Admiral Campbell, to whom the Admiral communicated his anxiety, and who entered so feelingly into his impatience, no interest to be particularly attentive to the motions of the Formidable? Captain Faulknor, Mr. More, Captain Leveson Gower, all the Captains who deposed that it was visible to them at the time that nothing prevented the renewal of the action, but the backwardness of the Vice-Admiral, in not bringing his Division down, and who felt for the interests of their Country, their own glory, and the honour of a Commander in Chief whom

U 2

they

they loved, had they no interest to be particularly attentive to the motions of the Blue Flag? How far must this man have been taught to presume on the indulgence of his Judges, to rest his Defence before them on such grounds!

But where he tramples on all decorum, and shews * the utmost contempt for their understanding as well as their feelings, is where, in p. 61, he tells them, *that, if he obeyed the signal for getting into the Admiral's wake, he should act contrary to the signal for the line then flying, which, being more commanding than the other, controuled it*; a signal which, it had been proved, he continued to disobey the whole afternoon, and which, the moment before, he contended he was justifiable in not having obeyed. But this was not all; his getting into his station in the line, as the Fleet then stood, and getting into the Admiral's wake, was exactly one and the same thing. His station, on the starboard tack, was the ninth ship a stern of the Victory; yet he has the folly, or the effrontery, to tell his Judges, that to obey the signal for the one would have been to act contrary to the other.

In the same page, and in the subsequent one, he labours to remove the plain consequences that pressed upon him from the comparative

* Indeed, this is an observation which, as the Reader must have already remarked, may be applied to every argument he addresses to them.

rates of sailing of the Formidable and Victory, at the time when he pretended the latter out-failed him.

The rate marked in the Formidable's Log, from four in the afternoon, is, for the first hour, *two knots two fathoms*; from five to six, *three knots*; and from six to seven, *three knots four fathoms*. The Victory's Log, for these hours, was uniformly marked *two knots*. So far, therefore, from being out-failed, the Formidable must have gained upon the Victory every hour. How then will he clear this point up to the conviction of his Judges? Nothing more easy! He impeaches the accuracy of the Victory's Log—it marks *too little*:—he impeaches the accuracy of his own Log—it marks *too much*. And then he resorts to *suppositions* and *probabilities*, and gravely tells the Court, that, if they *would only suppose* the Formidable's Log to have been as much *over-marked*, as he wishes them to *suppose* the Victory's to be *under-marked*, the affair is settled at once. Admiral Keppel, and Admiral Campbell, and Captain Faulknor, and Captain Leveson Gower, and all the Officers who swore to his having been *a-head of his station* in the afternoon of the 27th, and Sir Charles Douglas, and Captain Keith Stewart, and those who swore to his having been abreast of the Van on the morning of the 28th, are all perjured, and it *must be proved* that the Admiral never gave him an opportunity of coming up to

to the length of his station. This, it seems, was, in the judgment of the Court, a *full* and satisfactory discussion of this very important point; for here it ends, without an attempt to call a single Evidence to come at the fact.

PAGE 63.

He proceeds to falsify the *story* about the message by the Fox, *almost from beginning to end*. Here again we find him at his calculations, and suppositions, and probabilities, in direct contradiction to the most solemn, circumstantial, satisfactory evidence that was ever laid before a Court.

Admiral Campbell, Captain Faulknor, Mr. More, Mr. Rogers, Captain Windsor, Mr. Bertie, Mr. Courtenay, all deposed, that the hour of delivering the message to the Fox was *about five*. The Officers of that frigate were as unanimous in their depositions, that *in half an hour* from that time she joined the Formidable, and the message was repeated. This Mr. Rogers confirms by his oath. He saw the Fox close under the Formidable's lee-quarter, in about half an hour from the time he heard the message delivered. What then does the Vice-Admiral propose to his Judges, on the other side, to invalidate Evidence so ample, peremptory, and consistent? He makes short work of it. These witnesses are all *Lyars*. *They are falsified* (that is his expression) by the
con-

concurrent testimony of Captain Marshall, and Mr. Graham, his Purser, and Mr. Cawsey, his Mate, and the written Minutes of the Purser taken when the signals were repeated.

What a cloud of witnesses ! What a blaze of light does he here collect from so many different points, and pour in upon his Judges ! Who could imagine, that all this was nothing more, than the individual Mr. Graham, Purser of the *Arethusa*, wonderfully *concurring with himself*, and *multiplying* the Evidence of his own minutes ? Yet so it is. *First*, there's Captain Marshall, who declared he never took a Note, who knew nothing of time, who only read to the Court the Minutes of the signals, as given by the person whom he had appointed for that purpose. *Then* there is Mr. Cawsey, who never appeared in Court, but a paper of whose handwriting was produced, which the Judge-Advocate swore was *generally understood* to have been delivered by Mr. Cawsey to Sir Thomas Pye, on the late trial, containing a *Copy of those Minutes*, as taken by the person appointed for that purpose. *After* him comes Mr. Graham, the person so appointed to take those Minutes, but who gave Captain Marshall, and produced to the Court, only a *Copy* of those Minutes, which he declares is imperfect; and imperfect in what ? Imperfect *only* with regard to the very point in question. *Lastly*, there are those Minutes themselves, *taken* (says the Vice-Admiral) *when the signals*

signals were repeated; but which Mr. Graham says had been lost, and of which nobody could give the least account, and which consequently could never be produced. What fuller Evidence? What more concurrent testimony could the Court require? And, as to their being *in point*, what doubt could remain, after Mr. Graham had deposed upon his oath that they had nothing to do with it, and that he does not give the *time* of the Fox's signal, or of any other particular ship's signal, during the whole day?

But there was another Evidence, which it was naturally expected the Vice-Admiral would have produced. In the course of Admiral Keppel's trial, the strange account given by Captain Bazeley, of the two Midshipmen, who were appointed to take minutes on board the *Formidable*, during the action, having induced one of the Members of the Court to look at that ship's Log-book, to see whether any notice was taken of any signals made by the Admiral, or repeated by the Vice-Admiral, it was discovered that *three* leaves had been cut out, from the 25th to the 28th, and that *one* leaf had been put in with a fresh tacking of thread. In this new leaf, no one signal made on the 27th was inserted, but that for the ships of the Blue Division chasing to windward in the morning, on which Sir Hugh Palliser had grounded a capital Charge against the Chief Admiral.

To

To account for this extraordinary circumstance, it was proposed, that the Master of the Formidable should be instantly examined: but Sir Hugh Palliser opposed this, as interrupting him in his evidence; and the Court, expressly declaring, that *they relied on the Prosecutor's honour, not to have any communication with the Master*, agreed that he should not be called in till the next morning. Yet, on his examination, it was known that he had been closetted for an hour and a half with Sir Hugh Palliser and his lawyer, and questioned by them relative to this Log-book.

He deposed, that he did not see those leaves torn out, or the new one inserted. He only knew it from the information of a Mr. Winkworth, who told him he had done it. Between him and Captain Bazeley it was, however, pretended, that no minutes had been made after the action begun, or, at least, that none were produced by the Midshipmen appointed for that purpose. These Midshipmen were attending, but they had not the original minutes; they were in the possession of a Mr. Parry, who was either down in Wales, or on board the Triumph, at Chatham. Expresses were said to have been sent after this Mr. Parry; and, at the conclusion of his evidence, Sir Hugh Palliser begged, that, if he should arrive at Portsmouth before the close of the proceedings, he might be examined.

There is every reason to believe that Mr. Parry did actually arrive at Portsmouth before the close of the proceedings. But supposing he did not, was there not sufficient time, between the conclusion of Mr. Keppel's trial and the assembling of the Court-Martial on the Vice-Admiral, to have produced this Mr. Parry, with those original minutes, on which so much depended? Why then were they not produced? The reason is obvious. Had those minutes made for his cause, we should not find Sir Hugh Palliser thus bewildered and mired in his *probabilities* and *suppositions*, and *false representations*. He would have produced them, and opposed them to Mr. More's minutes, who was indeed absent in the East Indies, where he has since closed a life of credit and honour, but whose accurate evidence relative to time and signals was on the minutes of the former trial, and should consequently have been taken cognizance of by the Court-Martial *.

The facts, however, which the Vice-Admiral establishes from this wonderful *concurrence of this long list of witnesses*, which alone he chose to produce, amount *together*, he says, to demonstration: and from those facts he *kindly* suggests an apology to Mr. Keppel for all the abominable falsehoods he and his witnesses have advanced

* See pages 61, 62, 68, 69, 70, Admiral Keppel's Trial, and page 79, Trial by Blanchard.

about this celebrated message. He assures the Admiral, that, by his calculations and discoveries, he brings the *Fox* and the *Proserpine*, and not the *Fox* and the *Milford*, together along-side the *Victory*.

Sir William Burnaby, Captain of the *Milford*, says, that he received his message to Sir Robert Harland at *three quarters past four*. — Mr. Rogers agrees with him to a minute. He deposes, that it was three quarters past four by his watch, and that immediately after he heard the message delivered to the *Fox*. Mr. More deposes, that the *Fox* was hailed immediately after the *Milford*. Captain Faulknor swore, that the signals for the *Fox* and *Milford* were thrown out at the same time, and that, in about *six or seven minutes* after he had delivered the message to Sir William Burnaby, he saw the *Fox* making sail to windward, with a message, as he learned, to the Vice-Admiral of the Blue. Admiral Campbell also swore, that it was the *Fox* and the *Milford*. Mr. Keppel swore, that it was the *Fox* and the *Milford*. — “Very well,” rejoins the Vice-Admiral, “Still I say it was the *Fox* and the *Proserpine*. Mr. Graham, throughout all the “multiplications and transformations of himself “and his minutes, proves that the *Proserpine’s* “signal was hauled in two minutes after six ; “and therefore the *Proserpine* and the *Fox* must “have been within a minute of each other with- “in hail of the *Victory*.”

On the minutes of Mr. Keppel's trial, from which the charges against the Vice-Admiral were to have been collected, it appears, from Captain Sutton's Evidence, that he delivered a message to the Queen about *three o'clock*; but that *after that time he received no order or message whatever from the Admiral * the whole afternoon*. How then could his frigate, the *Proserpine*, have been along-side the *Victory* to receive this message, discovered by the Vice-Admiral's calculations, at two minutes after six? Captain Sutton was one of the Prosecutor's own witnesses on the first trial. How came it that he was not summoned upon this?

This apology, which he has *gleaned*, he tells us, *not without great labour and difficulty*, he tenderly wishes the Admiral to avail himself of. He acknowledges, indeed, that the Admiral, if he does avail himself of it, must give up all the officers of the *Fox* and *Victory*, and particularly Admiral Campbell and Mr. Rogers, to infamy; and, what he thinks still more painful to the Admiral, acknowledge the truth and accuracy of the officers of the *Formidable*, *who were never asked a single question relative to the Milford or the Proserpine, either by the Prosecutor or by the Court*.

PAGE 64.

"The time of delivering the message sent by the *Fox* is falsified," says the Vice-Admiral,

* See page 87, Admiral Keppel's Trial.

" in

"in the same *extraordinary* manner as the time
"of *sending* it."

All the Officers of the Fox had deposed, on Mr. Keppel's trial, that they reached the Formidable half an hour after they made sail from the Victory. Such of them as were examined on Sir Hugh Palliser's trial, *repeated the same words*. But this cunning magician, by his calculations and casting of figures, makes them describe such a circle, that he *proves* they were *considerably more than two hours* on their way [page 65]. He had before made it out, in his extraordinary manner, that they did not *receive* the message till past *six*; consequently they could not have *delivered* their message till *considerably more* than past *eight*: yet this he will have his Court-Martial believe exactly corresponds with the account of *all his Officers*.

All the Officers he called to this point were Captain Bazelev, Lieutenants Kinneer and Hill, Mr. Guerin a Midshipman, and his own Captain's Clerk. Captain Bazelev had deposed, on Mr. Keppel's trial, that * *between the signal for battle being hauled down, which was instantly after the action, till the time it was dark, the ship was in such confusion that he could not attend to any particular hour*. He further declared that † he could not speak to any time *within half an hour or an hour*. To this question he answers, that, as well as he could charge his memory, the Fox

joined the *Formidable* *nearly about sun-set*—Lieutenant Kinneer *believes* the time to have been *nearly about seven o'clock*; Mr. Guerin *near sun-set*; the Captain's Clerk, *near sun-set*—not a word about the particular hour. The sun, as the Vice-Admiral tells them further, sets at *half after seven* in the latitude the Fleet then was in. Yet this evidence of his Officers, all fixing it before sun-set, he wishes them to think corresponds with his calculations, that do not bring the Fox to hail the *Formidable* till *considerably more than half past eight*.

But why did he not also attempt to make these calculations correspond with the record of his own Log-book? This makes the Fox come under the *Formidable's* stern at *six o'clock*. In general, Logs may not be satisfactory Evidence. The attempts of Sir Hugh Palliser and Captain Hood will not certainly add to their reputation of authenticity. But Captain Bazeley, whose Log this was, accounts them sacred; and when it is known that it was revised, altered, and finally approved by the Vice-Admiral himself, we certainly must give it a great degree of credit, even if it was not supported by such clear and positive Evidence. But, again, how are any of those accounts to agree with his libel in the *Morning Post*, which asserts, that, at the delivery of the message from the Fox, it was *dark*?

My readers must be wearied, if not disgusted, with such miserable cavil and sophistry—such bare and naked imposition, and misrepresentation. But as these are the *decisive* arguments by which the

the

the Vice-Admiral pretends to demonstrate his own veracity, and to brand so many honourable men with the wicked and degrading crime of perjury, it was absolutely necessary to take this notice of them.

I shall pass over much stuff of the same stamp and impression, and slightly touch the few material points that remain for further observation.

He says, "How improbable is it that Admiral Keppel should send me a message that he was waiting for me, when he was not waiting?"

Strange attempt to mislead!—If he means any thing by these words, it is that the *Victory's* not lying to, but continuing under the sail she had set, was *not being in a state of waiting*. In point of *time*, his Admiral was most *surely* waiting. His lying to, or carrying less sail, was unnecessary, and totally foreign to the point, as the Vice-Admiral was proved to have been sufficiently *up* to have taken his station by steering nearly right before the wind.

But he adds, why were no *enforcing signals* made? What pains does this unhappy man take to destroy whatever little reputation he might have once enjoyed in the service? How does he labour to forfeit the character of a seaman which his friends so much magnify? and to prove that
he

he is as ignorant of the manœuvring of Fleets, and of the force and meaning of signals, as he has shewn himself disobedient to command? To the apprehension of a seaman, what signal can enforce the signal for the Line *? The Navy of England, in the days of her glory and prosperity, knew neither the expression of *enforcing signals*, nor the doctrine it inculcates. It was reserved for the days of its humiliation and affliction, to hear it first taught by the man who had tarnished its glory, and subverted the discipline that had rendered it formidable to the rest of the world. If the Admiral had recourse to other signals than the signal of the Line, it was not that they were more enforcing; for that could not be; but that he was willing to try every expedient that might draw more particular attention, and be more expressive of his impatience at the Vice-Admiral's delay.

- If the signal for particular ships of the Blue Division was postponed by the Admiral till he was wearied out with fruitless expectation, it was

* It may as well be said, that a decree of Council is necessary to enforce an Act of Parliament, as to contend that a signal for bearing into the Admiral's wake, or any other signal whatever, is necessary to enforce the signal for the Line. Nothing but the Vice-Admiral's ignorance could betray him into this argument. I shall gladly set the Gentleman right. He mistakes *enforcing* for *directory* signals. The one is common, the other was never heard of in the service. A ship may mistake her distance in the Line from the ships a-head of her—in such a case, the Admiral makes a signal to *direct* her either to encrease or lessen that distance. *But a signal to enforce the signal for the Line!—Fie! Fie!*

because

because the direction of that Division was left to Sir Hugh Palliser. The Admiral in Chief saw no reason to conclude that Sir Hugh Palliser had given over all charge or direction of it. There was no *visible inability* in the Formidable to resume her station. There had been *no signal made* communicative of such inability: she had passed *within hail of the Victory*, and no advice had been given of her being such a *wreck* as was afterwards pretended. The Ocean was close a-stern of the Vice-Admiral. He might *have shifted † his flag* into her, and bore down with his Division. All these expedients lay open to the Vice-Admiral, supposing the Formidable to have been really in distress. But, instead of adopting any one of them, he caused the heels of his fore topgallant studding-sail booms to be triced up to the topmast shrouds, the immediate preparatory step to bending the fore topsail, and by that gave the Admiral reason to expect, from minute to minute, that the defect of the fore topsail would be remedied, and the Formidable make sail.

Delicacy to the Vice-Admiral may well be supposed to have further protracted the moment

† Admiral Boscawen's shifting his Flag while in Action with an Enemy's Fleet that was sailing large, will refute all the Vice-Admiral's long reasoning about the great length of time such an operation requires. The difficulty of the Formidable's getting out a boat is nothing to the purpose. The Vice-Admiral could have easily procured one from the Ocean.

of a signal that must have conveyed strong censure on his conduct, by calling away the ships of his Division from the flag. This delicacy may have been carried too far. But it gave way at length to indignation, and the strong call of duty. It might, indeed, have been *too late for any good consequences that evening* (page 65), as this infatuated man contends, to his own shame and disgrace. But it was to be sure of their services in future, that the Admiral called those ships from under the direction of an officer, of whose backwardness and disobedience, he, that day, for the first time, had such mortifying experience.

When I observed that this delicacy went too far, I adopted the idea of the Vice-Admiral. In this same page, he seems, by his questions, to throw censure upon his Admiral for having deferred to take his ships from him so long. He observes, with a kind of triumph, that the signal for his own ship to bear down was never made. * In his printed Speech, he repeats the observation, and adds, that he concluded that the Admiral did not expect *him*, but the ships of his Division. This was the impression it made on him at the time. This, then, is the *Bull-Dog*, who panted for the glory of a *second bout* with his adversary! who exulted in the bare *idea* of renewing the action! who, among the different

* Page 5.

*measures that could possibly offer themselves to him, would have preferred * the one which would have been likely to bring him into action soonest and most effectually !* He sees that his Admiral wants *his Division*, and not *his ship*; yet he does not take a single step for removing into another, or resume the important post to which he had been appointed ! What is this but subscribing to his own infamy ? And how resigned and contented does this officer, third in command, own himself to have been in the miserable condition of being left out of service at such a moment ?

Upon the whole, all these wretched excuses, to which he is driven to palliate his disobedience, are such as even a private Captain could not defend. Yet in a private Captain, though the neglect would be equal, it could not include equal guilt; for its consequences could not be so fatal. In one case, a single ship would be lost to the service ; in the other, a whole Division would be rendered useless to the Fleet.

PAGE 66.

The Vice-Admiral rejoices that he can prove, that his distinguishing lights were kept burning the whole night of the 27th.—Captain Bazeley, on Admiral Keppel's trial, positively deposed that they were not ; on Sir H. Palliser's, he *thought* he could venture to say that the stern-

* Page 92.

lights were burning. The Lieutenants who came backwards and forwards on deck (for they kept no watch) never saw any lights. None of the ships either a-head or a-stern ever perceived them, except the America; and of her whole company the Master alone was found to swear that he saw them till *eleven o'clock*.—But on the Evidence of this *one man*, supported only by the testimony of two common seamen of his own ship, the Vice-Admiral tells his Judges he has *established the fact*—and on this evidence they believed him.

The situation of his ship, as discovered towards the dawn of the morning, includes two important considerations, and therefore deserves remark. It proves, that, so far from being unable to keep pace with the Victory, *owing to the Admiral's making much sail*, the Formidable shot a-head, some miles beyond her, to the length of the Van of the British Fleet.—It was well nigh throwing the Van into disorder. Sir Charles Douglas, of the Sterling-Castle, astonished to see two Flags so close together, the Flag of his own Division being a little distance a-head, was led to entertain a suspicion, that the French, by having made a trip on the larboard tack, had possibly doubled upon our Rear, in order to regain the weather-gage. In consequence of these observations, he ordered preparations for battle to be instantly made, and only discontinued them, when, from tracing the ship with the Flag,

as she advanced, he discovered, beyond a doubt, that it was the Formidable. This *was at or about the first dawning of the day*; the time when the Vice-Admiral himself, supposing he had fallen upon the Enemy, *beat to arms*. There was not a man in his ship, Sir Charles says, who doubted that this ship was the Formidable. George Ayton, of the Stirling-Castle, deposed, that she engaged the attention of every man upon the deck, and swore to her being the Formidable. Robert Spence confirms this by his oath. Captain Keith Stewart is positive he saw her on the starboard quarter of the Berwick, the ship immediately a-head of the Sterling-Castle, about *two o'clock*. Yet the Vice-Admiral asserts in this page, [page 66,] that he can prove she was at *that time a-stern* of the Victory. If he proves it, the proof is indeed in his own *extraordinary manner*. Captain Bazeley swears, that at *break of day* the Formidable was in her station, a-stern of the Victory. Lieutenant Kinneer, when he first came on deck, found her in her station, but mentions no time. Lieutenant Waller never saw the Victory after one, till he found his own ship in her station a-stern of her, *at day-break*. These were the witnesses he called to this point. But, as the reader observes, not one of them speaks to the precise time in question, which was, according to Captain Stewart, *at * two o'clock* in

* Page 57 of Admiral Keppel's Trial, Captain Bazeley deposes that the Formidable's drum beat to arms *at two o'clock*.

the morning, and, to Sir C. Douglas and his officers, at or about the first *dawning of the day*.

There is so much repetition and perplexity, and such want of order in the composition of this Defence—it is so much the Vice-Admiral's object to confound and bewilder, to blend circumstances and times unconnected with each other, and disjoint points which should come properly together, that it is impossible to follow him in any regular distinct series of refutation. I must therefore pass on to an observation of his in page 92, to recur again to some intervening questions that properly belong to the conclusion of his Defence.

In this page is the following passage: “ And
 “ here I beg leave to take notice of a circum-
 “ stance which corroborates my idea of the
 “ Admiral's intention. At the late trial, I pro-
 “ posed it as a question to a Witness, whether,
 “ from the *motions* of the Admiral and *his public*
 “ *letter*, the Witness did not infer that there was
 “ no intention to re-engage till next day—
 “ the Admiral strenuously resisted the putting
 “ such a question, and the Court over-ruled it.
 “ This circumstance will be found in page 33
 “ of the Trial printed by authority; but I do
 “ ask, whether any thing could more evince the
 “ Admiral's consciousness of the sense conveyed
 “ by his own words, than *such a dread to bear*
 “ *the construction of them.*”

The reader would expect, that, being with so
 much

much presumption referred to a particular page to establish the truth of this observation, he should meet with nothing less than direct conviction. But I shall transcribe the Vice-Admiral's questions, separated as they are in the Trial, and he shall judge.

Question to Captain Hood from the Prosecutor.

PAGE 32.

"From the Admiral's *shortening sail* whilst standing towards the Enemy, hauling down the signal for battle, wearing and standing to the Southward, with the French Fleet then a-stern, did you or did you not *then* * conclude that the Admiral had determined not to re-attack that evening?"

Answer. "I have already said I did not see the Admiral shorten sail, when the signal for battle was hauled down. I cannot pretend to judge of the Admiral's determination."—Sir Hugh then puts the question as follows :

Q. "Have you *since* been of that opinion from the various motions of the Admiral at that time, and from the Admiral's own account published by authority?"

Such an abuse and even perversion of the principles of evidence never was before proposed to any Court. A witness is produced to tell what

* It was then but three o'clock.

he

he has seen and observed in a particular action at Sea, and he is called upon by the Prosecutor to comment on a letter printed in the London Gazette. The reader by this would take a proper measure of the understanding of the man, as well as of his integrity and fairness, if he had no other standard. The Admiral very justly interposed his objection. He would not suffer Captain Hood to judge of his letter, or to interpret his meaning. The letter was before the Court, and they, and they only, were the proper judges of what was to be inferred from it. To suffer such comments to be entered as evidence would leave the life and honour of no Officer in safety. The Court supported Mr. Keppel as they ought. They deliberated, and agreed that the question was improper for them to admit. They were trying the Admiral for his conduct on the 27th and 28th of July—They were to examine as witnesses the Officers who were present on those days, and the Evidence was only to relate to what appeared to them at *the time*. Subsequent hear-say, or subsequent conjecture, could not be suffered to come before them, without their forfeiting every pretension to common justice. Besides, the question must have struck them as dictated by the very blackest spirit of *malice*. To beg a witness's opinion or construction *upon oath* of the meaning of another man's letter—and to offer that construction as evidence in support of a charge against that man's life!—Next to the guilt of this attempt, is to hear him, upon his own Defence,

Defence, interpret this objection of the Admiral's into a *dread to hear the construction of his own words*? Did it not strike him that *some* of his Judges, who might be inclined to do justice between him and his country, would recollect *the dread that he himself had shewn* to hear the meaning of that letter? Admiral Keppel, upon his examination, expressed the strongest unwillingness to touch upon the business of that letter at all. He long struggled against the *seemingly* importunate questions of the Vice-Admiral to speak fully to it. But when, pressed to the uttermost, he was reluctantly proceeding to *explain* what he *meant* by it, he was suddenly stopt by the Vice-Admiral. * "The Vice-Admiral *did not ask his meaning*"—He who calls on a stranger to enter into his meaning, would not suffer the writer of the letter himself to explain the purpose for which he wrote. This circumstance was fresh in the recollection of the Court. They could not have a doubt where the *dread* really operated.

But Sir Hugh Palliser has led to other observations, very material and very conclusive against himself, by his comments on this letter. The *intention* he alludes to is that of the Admiral's not re-attacking the French Fleet. In his question to Captain Hood, he fixes the time to three o'clock. It was therefore at *that hour* he con-

* Page 10, Sir Hugh Palliser's Trial.

cluded that the Admiral had given up all intention of engaging till the next day; and the Admiral's own letter, he says, proves that he was right in his conjecture. The Admiral's own letter warrants no such assertion. It says, that, at *the close of the evening*, he suffered the French Fleet to form to leeward—why they were then suffered to form, he did not think prudent to discover to the Public; and to that Public we shall presently justify his conduct on that occasion.

On this conjecture, however, that *at three o'clock* (which he calls the close of the evening of the 27th of July) the Admiral had given up all intentions of engaging till the next day, the Vice-Admiral grounded a charge against his life—It was *cowardice*—it was *a shameful flight*—it was *tarnishing the glory of the British Flag*. But when he comes to the transactions subsequent to this time, he brings in this very conjecture of his own, and the visible reasons on which he formed it, as the very ground-work to his own Defence. These reasons, he says, were many. Those on which he insists most are, *the shattered, disabled, unconnected, unfitted state of his own Division, and the incomplete forming of the Center*—under such circumstances he *concluded* it was *impossible* that the Admiral should *then* think of renewing the action, and upon this conjecture he presumed to act in direct contradiction to his Admiral's orders.

Is not every part of this argument (if it had any weight) decisive to acquit his Admiral of the malicious charge he had brought against him? Had the Fleet received any damage at *four* or *five*, that it had not received before *three*? Was the Blue Division less *shattered, disabled, unfitted, unconnected*, or was the Center more perfectly formed, at *three* than at any subsequent hour? Was not the very reverse proved upon oath? Was there a ship of either of * these Divisions, except four of the Center, in a state to support the Admiral at the time his Prosecutor makes it a crime in him not to have attacked the Enemy? And at the hour, that is, after *five o'clock*, when, to palliate his own crime, he tells us, that, from the shattered and unconnected situation of the Fleet, it was *impossible* for his Admiral to have any thoughts of attacking, had there not been more than three hours to repair the damages? Was not the Van of the British stretching a-head in regular order to their station? Was not the Center formed with its Admiral? And did not the Vice-Admiral of the Blue and his Division alone remain to windward, and prevent the perfect forming of the Line?

Will he, then, pretend to maintain that it was more *possible* for the Admiral to engage immediately after the action than at this *later period* of the afternoon? Did he not then endeavour to

* Sir Robert Harland's Division is out of the argument,

rob his Admiral of his life, for not attempting what he confesses himself he concluded it was impossible for him to have thought of attempting, and which, strange infatuation! he takes so much pains in his own Defence to prove to have been impossible? Whoever can combine these circumstances, and not convict him of *malice*, either must have no sense to apprehend, or no heart to feel.

PAGE 66.

He enters once more upon his own praises, He collects all that his † Admiral had said of his spirited conduct in the engagement, and the approbation bestowed, in the public letter to the Admiralty, on him and Sir Robert Harland; and then asks how the Admiral will account for his present censures?

† The Vice-Admiral of the Blue lays great stress as well on his killed and wounded in action, as on Admiral Keppel's expression to Vice-Admiral Campbell, when Sir William Burnaby delivered the Vice-Admiral of the Blue's report of damages. The true state of that affair is this:

The Vice-Admiral of the Blue was known to have fallen in with that part of the French line that had been previously engaged by part of our Van and the whole of our Center Division. It could not therefore be supposed that he had received as warm a reception as those ships that had gone before him, and the Admiral had reason to be astonished that the Formidable should have had so many killed and wounded.—“But he said, “The Vice-Admiral has suffered more than any of us.” True; but he did not know at that time, that the Vice-Admiral had made so capital a mistake as to put down 51 instead of 15, which afterwards appeared to have been the real number killed, as well in action as by the blowing up of the powder.

I know

I know not in what terms the Admiral would account for them; but the very face of the business, and what may be collected from the Admiral's own Defence, his evidence on the Vice-Admiral's trial, and his declarations in the House of Commons, will account for them to the Public, and reconcile them to his conduct.

He might have written a letter, perhaps, more adapted to the sense of the common-people of England: he might have bestowed great encomiums on himself; he might have represented the flight of his Enemy in more insulting, contemptuous terms, and have informed his countrymen, that he should have brought his trophies into port with him, if his Officer, third in command, had done his duty in giving him proper assistance, and proper information,

But such a measure would have been productive of consequences so fatal as matters then stood, that he resolved to run every risk in the opinion of his countrymen, rather than plunge into it. A letter of that tenor must have been followed by an immediate enquiry. All the operations of the campaign must have been suspended. The whole Fleet must have been confined to port, either as witnesses or judges; the narrow seas left open to the Enemy; and the East and West India Fleets, which required protection at the entrance of the Channel, exposed to their cruisers and privateers.

At

At the same time he had the power in his own hand effectually to guard against a repetition of his Vice-Admiral's disobedience, and to prevent its consequences. When it was objected to Sir Hugh Palliser, in the House of Commons, as little less than treason to the State, that he should have suffered the Fleet of England, the only hope of his country, to put again to sea, and that he should have sailed himself, under the command of Admiral Keppel, if he knew him to be the traitor and coward he afterwards endeavoured to prove him, it was retorted with great triumph, "But did not the Admiral sail again with the Vice-Admiral? Knowing him once to have been guilty of disobedience, why did he give him an opportunity of repeating his guilt?"

In answer to this, it would be sufficient to observe, that, allowing the justice of the retort, still it would only prove that Sir Hugh Palliser was, in this instance, equally guilty with Admiral Keppel: but the cases are totally different; and no man, not vitiated to the heart by the corruptions of the Court, could think of confounding them. If the Commander in Chief be unequal to his station--if he be ignorant of his profession, weak to plan, and tardy to execute, his Country must inevitably suffer--it is not in the power of any subordinate Officer to prevent the consequences of his errors, or of his

• Governor Johnstone's speech.

crimes.

crimes. But, in an inferior Officer, treachery, disobedience, or ignorance, can be instantly chastized and redressed. The Chief Admiral can remove him with a *filip*, to adopt Mr. Keppel's forcible expression: that is, he can, without a moment's hesitation or loss, suspend him from his command, and appoint a more able and active successor.

With this absolute controul at command, Admiral Keppel availed himself of that discretionary power which every Commander in Chief should possess, and the prudent exercise of which has often been productive of the happiest consequences. He dissembled the fault of his inferior Officer; he gave him praise where, along with others, he deserved it; and, on the points where he had been culpable, he observed a cautious silence. To that silence and caution it may be owing (and, in some degree, it certainly is owing) that at this day we are a Naval Power.

He made those praises general, and he sought for the subject of them only in those instances that could admit of their being general, without any appearance of reserved censure. He even seems to have designedly deprived his Second in Command of the priority of approbation his singular attention, zeal, and activity, called for at his hands, rather than make a distinction, which would have defeated all the good

good purposes of the resolution he had formed. Merely in passing the French line, there was nothing to distinguish Sir Robert Harland from Sir Hugh Palliser: that circumstance he mentioned, and to this he confined his encomium. Sir Robert Harland had been active, vigilant, punctual in his obedience to the orders of his Commander in Chief, to the admiration of the oldest Officers in the Fleet. Sir Hugh Palliser had been backward, negligent, disobedient. Had he given praise to the one, he must have withheld it from the other, and his withholding it would have been positive censure; he was therefore totally silent on the subject.

Having once made up his mind to this measure, it was necessary for him to assume a language and conduct, as well to Sir Hugh Palliser himself as to the Fleet, that could not give the most distant suspicion of what really passed in his mind. At Plymouth he laboured to promote the most perfect harmony and good understanding in the Fleet. He discountenanced every retrospect that could lead to imputations on any of his Officers, and he encouraged a reciprocation of approbation and praise. At the request of some, who were censured by anonymous publications, he repeated his commendations on the spirited conduct of his Officers, in his letters to the Admiralty, and he bestowed them in the same general extent as in his former letter from sea.

The

The happy consequences of this conduct were visible. All was harmony and good understanding in the Fleet; and it soon after put to sea, animated, seemingly, with one mind, and actuated by one heart.

But, in the midst of all this good humour, the Commander in Chief took care that the failure of the 27th should never be repeated. He issued an order, which, from its appearing to him to be necessary, conveyed censure, though gently, and in a language understood only by the intelligent naval Officers; and at the same time provided, that, if the Vice-Admiral of the Blue should repeat his disobedience, the Division under his command should not be involved in the consequences of it, or lost to the Fleet. The order was, "*in future* to observe, that the "Line is always to be taken from the Center."

These remarks would be amply sufficient to reconcile every fair and candid mind to the Admiral's conduct on this occasion. But, as much difference of opinion has been expressed upon the subject, it may not be amiss to enter into it still more minutely.

It has been asked, Why the Admiral did not suspend Sir Hugh Palliser the first moment he stood, to appearance, culpable of backwardness and disobedience to signals? or, Why he did not arrest and confine him the following day?

A a

This,

This, when applied to the Vice-Admiral's cause, is surely a sad Defence. To infer his innocence from his not being instantly punished, is poor reasoning. But on such great conjunctures, it is far more easy to censure than to act.

I would ask, Which was the proper period to have seized for his suspension on the afternoon of the 27th? Could it have been done, or, rather, ought it to have been done, at three o'clock, after he had passed the Victory upon contrary tacks, while his Admiral was standing towards the Enemy? He, certainly, by quitting his station at that moment, acted in direct contradiction to the signal for the line of battle that was flying; or, supposing him not to have seen it, was equally culpable in leaving his Admiral exposed to a danger from which he had himself fled. But his damages, for any information the Admiral had received, might, at *that time*, have *compelled* him to this manœuvre; and his *disobedience* was not, just at *that time*, (tho' afterwards it was,) the only reason that disappointed the Commander in Chief in his intention to renew the action.

Was four o'clock the period for suspending him? He certainly, at that hour, was not proceeding to his station in the line, in obedience to the signal; nor did the unbending the Formidable's fore topsail shew activity in setting her to rights. But, as she came out of action
about

about *three quarters of an hour* later than the Victory, the Vice-Admiral and his Division, in equity and temperance, had a claim to that time — they had even a claim to more, as it was but fair to allow that they *might possibly* have suffered more than the Victory, who was not in a state of repair till after three.

Should he have been arrested at any time before five? Till within a few minutes of that hour the Admiral had not been able, by the properest signals he could make, to collect his Center ships. Before that was effected, he waited with patience. He soon perceived, indeed, that the Vice-Admiral even then made no attempt to bring his Division into his station, and his temper began to be exhausted. Yet still he had reason to think the effort by message the properest and the most effectual rebuke; and from the time he sent it, till late in the afternoon, he expected from minute to minute that it would produce its effect.

He might, it's true, after this last attempt, have sent Admiral Campbell with his orders to take the command from the Vice-Admiral. But the day was wasting apace; and the Formidable was too far to windward to have profited by such severity either in time or to effect.

After the reflections of the night, the Admiral had it certainly in his power the next morning to pursue any measures these reflections might have suggested. But when the morning came the Enemy were fled beyond his reach. All then that was left for him at *that instant*, was to give an account to the nation of the transactions of the day. But his account to the nation was at once to decide upon his subsequent conduct. And here the great and weighty objections I have stated above, pressed upon his mind, and dictated to his cool and calm determination the conduct he embraced. He wrote his public letter, which in itself bears incontrovertible proof to the distress * of mind he must have laboured under, and the uncommon difficulty he must have felt to judge by what refined distinctions he could cover a transaction that had been visible to 20,000 men. He could only do it at his own risque, and by taking every thing to himself.—But, conscious of having done his duty, and secure of being able to justify his conduct, he embraced that risque, and told his countrymen that he had allowed the enemy to do what, from the disobedience of his Vice-Admiral, he had it not in his power to prevent.

Such was Admiral Keppel's representation to the Public. But if Office was deceived by it, it was their own fault—it was a fault in them deliberate and wilful, and one for which none of the

* See the evidence of Mr. Rogers on Admiral Keppel's trial.
reasons

reasons which justify Mr. Keppel's concealment can be assigned.

The letter was accompanied with a message that ought to have attracted the immediate attention of the Marine Minister, and produced in time the enquiry it was designed to suggest. Captain Faulknor was desired to acquaint Lord Sandwich, from the Admiral, "That he " had more to say to him than he thought proper " to put in his public letter ; and, if it was his " Lordship's pleasure to ask him any questions, " he was ready to wait on him." This message Captain Faulknor *repeated twice* to the First Lord of the Admiralty, but no notice whatever was taken of it *.

If, notwithstanding all these considerations, his country still think that Admiral Keppel should have called his Vice-Admiral to immediate trial, I am at least clear that he should have their forgiveness. His enemies, and the advocates of the man who is indebted for his life to the omission, have converted it into an exhaustless source of private blame to himself ; but the Nation enjoyed all its happy consequences in the preservation of the peace and harmony of the Navy, while his prudent determination was suffered to operate, and in the protection of their trade, and

* See Captain Faulknor's evidence, page 132 of Admiral Keppel's Trial.

the security of the Channel, during the rest of that campaign.

If the peace of the Navy has been since interrupted and destroyed---if all the happy fruits of the profound sense, and politic foresight, that mark the conduct of the Admiral in this instance, have been blasted and destroyed, let the blame fall where it ought---let those answer for it to their country, who, having the power to check the attempt at its origin, first encouraged and fomented, and afterwards rewarded the malicious spirit that gave rise to it.

In the last paragraph of his Defence, the inveterate rancour that lay festering at the heart of the Vice-Admiral, but which he had for a short time repressed, while he dwelt on his own exculpation, returns upon him with increased violence. This was the poisoned spring from which all his malicious accusations against his Admiral first flowed, and to give it further vent by reverting to it was the last *indulgence* he supplicated from his Judges.

Admiral Keppel, in the course of his evidence, thanked God he was not an Accuser---“ * But “did the tenor of his evidence,” asks the Vice-Admiral, “correspond with this declaration?” Most certainly it did, as far as it regards the Admiral’s intentions or wishes.

"Was not his evidence," continues he, "criminating in every part?" This observation is in the true spirit of Sir Hugh Palliser's logic, morality, and modesty. He is, then, of opinion, that, if a man, from humanity, and sense of propriety, declines to be an Accuser, he is to perjure himself when compelled to be a Witness, in order to exculpate the criminal he had forborne to prosecute. If his evidence is criminating, as it undoubtedly was, and convicting too, was the fault in the Admiral?---He was answering, upon his oath, the truth, the whole truth, and nothing but the truth, to questions proposed to him by others. He wished to be excused from the necessity of giving answers to such questions, because he knew that they would not be dictated to him by his feelings, but imposed on him by the truth; and the truth, he knew, must be *criminating in every part.*

In the same style of absurdity he proceeds to detract from the credit of the testimony against him, only because it was against him; and, in order to take away the effect of such clear, consistent, and able witnesses, asks, * *If the friends of Mr. Keppel had not all joined in the accusation against him? If they had not sealed this accusation by their testimony upon oath?*

If his interpretation of this circumstance

should be adopted, no criminal can ever be convicted. Every witness, whose testimony proves the guilt, must be set aside, because it *does prove the guilt*, and because it is sealed by an oath. *The friends of Mr. Keppel*, that is to say, all the Officers of the Fleet, who were called, may be said to *have joined in the accusation* of Sir Hugh Palliser, as far as Mr. Keppel himself may be said to have accused him; but no further. No virulence or intemperance of resentment, no recriminating suggestions of *self-defence*, such as Sir Hugh Palliser, in direct contradiction to his Advocates among the Ministry, here acknowledges to have been his motives from the first, could have infected their hearts, or dictated their testimony. They were summoned by an authority which they could not disobey, and, in giving their Evidence, they were bound by a power of still superior command, the power of Conscience and Honour. That Evidence they have certainly *sealed with their oath*; and the articles of crimination it includes against the Vice-Admiral, are stamped with the same *sacred seal*. Thus solemnly ratified, they are now submitted to the Public—thus ratified, they will descend to Posterity.

Unhappy man! What pains does he take to confirm his own guilt? In what stronger terms, or by what more solemn proofs, would his bitterest enemy labour to establish his criminality beyond the hope of acquittal or palliation? How
does

does he run in search of arguments to deprive his friends the Ministers of every pretext they could devise to justify the honours they confer on their favourite Officer.

Such Ministers and such Officers are only worthy of each other:—Officers who can sit down content and happy under censure and disgrace, and Ministers who can exalt and reward them. “My mind,” says this high and nicely susceptible Spirit to his Judges, “sees no medium “between life with *entire* honour, and death “without; and I ardently wish that your judgment, be it what it will, may be directed “by the same alternative.”—His Judges, most certainly, have not complied with his *ardent wish*—They knew him better, and he has thankfully acquiesced in their determination. They have passed censure upon him, but without punishment—that is, they have stripped him of his *honor*, but they have left him his *life*; and he has gratefully accepted the boon at their hands. They condemn him, as I have already observed, on the only charge that can properly be said to have been brought before them; but of what they *acquit* him the world is yet to guess.

Such, however, as this acquittal is, it is not declared to be unanimous: to have said that it was honourable, would have been a contradiction to itself. We all remember how the Court was constituted; we know how many days the Mem-

bers passed in * *deliberation* before they could produce the sentence---From what quarter the determining voices came, is surely not a matter of very difficult conjecture.

† Yet the Vice-Admiral boasts of their judgment as the most honourable circumstance of his life. The confidential servant of the Crown joins with him in opinion; and a majority in the House of Commons countenance and support them. However, even in their present state of degeneracy, the number who stood forth to protect the Navy and Nation from disgrace were many, and of the first for abilities, character, family, and property.

How low must the Navy of England be fallen! How must her ancient spirit be broken, and all her former glory tarnished, when men, who can pride themselves on *such* an acquittal, as the most honourable circumstance of their life, are preferred to her highest honours, are protected, cherished, *exclusively consulted* by the power that directs her operations!—when all that is great, renowned, and revered in her service, is

* I might with more propriety have said *disputation*—This ran sometimes so high, that the people were obliged to be turned off the deck of the Sandwich, to prevent their overhearing it.

† In his printed Speech. It should be observed, that this Speech was kept from the Public till after Mr. Fox had made his motion:—doubtless, lest any notice should be taken of its dangerous doctrines, and its numberless falsehoods and absurdities.

sacri-

sacrificed to their advancement; and her favourite Admirals, who alone could give confidence to personal bravery, and efficacy to national exertion, are driven from Command, to gratify their malice and thirst of revenge!

How can she hope to shake off this disgrace? Where can she find a hand to relieve her? Does she look to Parliament? There the destroyers of her glory, and the subverters of her discipline, triumph under the shelter of power and influence. The direct broad censure, and the cold discordant negative acquittal of a jury of men, constituted by artifice and ministerial management, trying without accusation, and pronouncing judgment without a charge, are there received as the most honourable plea to rewards and employments. There the warm, impassioned, unanimous judgment, not only of a Court of unexceptionable Officers, but of all the Admirals and Captains of the British Fleet, who had been witnesses of the transactions to which they bore Evidence, and on which they were the most competent to pronounce—a judgment that conveyed not merely a partial acquittal of the *groundless* charges *maliciously* urged in the accusation of innocence, but a positive tribute of universal admiration, and unlimited applause—a judgment echoed from the hearts of a whole people, rejoicing in the triumph of virtue, and the discomfiture and confusion of persecuting guilt—a

judgment confirmed by their own unanimous suffrages, and recorded among their annals, in terms the most glorious and honourable that were ever bestowed on extraordinary merit, and distinguished character—a judgment thus dignified, thus stampd by every thing that is convincing, conclusive, or honourable upon earth, is now libelled, stigmatized, condemned by the very Minister who had himself subscribed to its justice, and by a pliant majority, who blindly follow him through all his changes and contradictions, all his doublings and inconsistencies.

In this subversion of all the fundamental essential distinctions between right and wrong, vice and virtue, honour and infamy, what is to become of the country that is visited with the counsels of such men? The great and distinguished characters, whom they publicly sacrifice, and by every base and insidious artifice secretly defame and traduce, are, as far as they are themselves personally concerned, beyond the reach of their impotent malice. Not all the malignant, sanguinary efforts of official Informers can ever hope either to sully their honour, or injure so much as a hair of their head.—Their merit comes out the brighter from such persecution.—These attempts of their enemies to injure a reputation that had never been called in doubt, only serve to procure it a more confirmed applause and a public triumph.

It

* It is not in the frothy effusions of restless, intriguing Ambition, to detract from their merit; nor in the high-sounding words of avowed Apostacy, to rob them even of a grain of that esteem in which they stand with their country at large, or that confidence which they have so long and so justly acquired from the service that reveres and regrets them. There is no influence in authority, no force in declamation, to make the Public admit, that the highest professional reputation, universally established, can have been gained without long-tried deserts, and successful services; or that backwardness, neglect, and disobedience, entrenching themselves in malicious recrimination, can be *meritorious* or *exemplary*.

Their Country, then, is the only sufferer in the infamous persecution those exalted characters undergo, from the destructive abuse of power, and misplaced authority. She calls for their services in the hour of her greatest danger—But the corrupt hands of Office beat them back with insult—recriminating guilt, successful apostacy, and an obsequious, prudent acquiescence, that

* We need not point out the man to whom those observations are applicable. He must have been very inattentive indeed to the transactions in Parliament, who knows not the former tenets and conduct of the professed censurer of Lord Howe, and the insidious defamer of Admiral Keppel.

keeps

keeps its secret, and dares neither to remonstrate nor resist, stand between them and the Throne.

Thus the strength of the nation is converted into weakness, and the Navy of England, through which alone we can hope to resist the powerful combinations that assail us from every quarter of the globe, is left without either a heart to animate, or a head to direct it.

F I N I S



L A T E L Y P U B L I S H E D,

THE PROCEEDINGS at Large of the COURT-MARTIAL on the Trial of the Hon. Augustus Keppel, Admiral of the Blue, held on Board his Majesty's Ship the *Britannia*, on Thursday, January 7th, 1779, and adjourned to the House of the Governor of Portsmouth, and there held till Thursday February 11th, 1779, when the Admiral was honourably acquitted. Taken in Short-Hand by W. Blanchard, for the Admiral; and published by his Permission. With an Appendix, containing the Admiral's Correspondence with the Board of Admiralty. Second Edition, with an Index. 6s.

* * * The Public are desired to observe, that this is the only Trial published with the Admiral's Knowledge and Permission.

II.

The ORIGIN and AUTHENTIC NARRATIVE of the present MARRATTA WAR, and also of the late ROHILLA WAR, in 1773 and 1774; whereby the East-India Company's Troops (as Mercenaries) exterminated that brave Nation, and openly drove them for Asylum and Existence into the Dominions of their former most inveterate Enemies. To which is added, The Unaccountable Proceedings in the Ordnance and Military Store-Keeper's Office in Bengal. Price 2s.

Printed for J. Almon and J. Debrett, opposite Burlington-House, Piccadilly.

OF WHOM MAY BE HAD,

AUTHENTIC ABSTRACTS of MINUTES in the SUPREME COUNCIL of BENGAL, on the late Contracts for Draught and Carriage Bullocks, for victualling the European Troops, and for victualling Fort-William; the Augmentation of General Sir Eyre Coote's Appointment, and Continuation of Brigadier General Stibbert's Emoluments, though superseded in the Chief Command; and a remarkable Treaty, offensive and defensive, with the Ranah of Gohud, a Marratta. Price 1s. 6d.

The RIGHT, INTEREST, and DUTY of GOVERNMENT, as concerned in the AFFAIRS of the EAST INDIES, The Case as stated, and Argument upon it, as first written by Gov. POWNALL, M. P. in 1773, now revised. Price 1s. 6d.

In

The CASE of the GOVERNOR and COUNCIL, of MASSACHUSETTS, fairly stated. With Observations and Remarks on both Parties. Price 1s. 6d.

CONSIDERATIONS on INDIA AFFAIRS; particularly respecting the present State of Bengal, and its Dependencies. To which is prefixed, a Map of those Countries, from actual Surveys. By **WILLIAM BOLTO.** Price 12s.

Printed for J. A. Men and J. D. Smith, opposite Burlington.

TO WHOM MAY BE HAD

AUTHENTIC ABSTRACTS OF MINUTES in the SU-
 PREME COUNCIL of BENEVOLENT, on the late Contracts for
 Drawing and Carriage Horses, relating the Agreement in
 London, and for visiting the same; the Agreement in
 London for the Good's Agreement, and Condition of B.
 and General stipulations; and a remittance, often in the
 Chief Command; and a remittance, often in the
 with the Head of Office, a remittance, often in the

Gov. FOWLER: Mr. P. in 1887, now revised. Date is 64.
The date as stated, and argument upon it, as first written by
MINT, as contained in the AFFAIRS of the EASTLANDS.
The RIGHT, INTEREST, and DUTY of GOVERN.